

Volume II
TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

October Term, 1963

No. 804

UNITED STATES, APPELLANT,

vs.

ALUMINUM COMPANY OF AMERICA, ET AL.

**APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF NEW YORK**

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 204

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INDEX

| Record from the United States District Court for the Northern District of New York—Continued | | | Original | Print |
|-------------------------------------------------------------------------------------------------|--|--|----------|-------|
| Transcript of hearing, February 27, 1962..... | | | 1864 | 977 |
| Colloquy between court and counsel..... | | | 1866 | 977 |
| Testimony of James R. MacDonald—direct..... | | | 1875 | 981 |
| —cross..... | | | 1894 | 990 |
| Testimony of Anthony J. Nesti—direct..... | | | 1920 | 1004 |
| Offers in evidence..... | | | 1922 | 1005 |
| Testimony of Anthony J. Nesti—cross..... | | | 1938 | 1013 |
| —redirect..... | | | 1978 | 1034 |
| —recross..... | | | 1984 | 1036 |
| Colloquy between court and counsel..... | | | 1984 | 1036 |
| Testimony of Frank L. Magee—direct..... | | | 2001 | 1044 |
| Offers in evidence..... | | | 2004 | 1046 |
| Testimony of Frank L. Magee—cross..... | | | 2043 | 1066 |
| Testimony of Ralph V. Davies—direct..... | | | 2062 | 1076 |
| Offers in evidence..... | | | 2080 | 1085 |

Record from the United States District Court for the
Northern District of New York—Continued
Transcript of hearing, February 27, 1962—Continued

| | Original | Print |
|----------------------------------------------------------------|----------|-------|
| Testimony of Ralph V. Davies—cross | 2099 | 1096 |
| —redirect | 2112 | 1103 |
| Kemp W. Reece—direct | 2113 | 1103 |
| Leon E. Hickman—direct | 2121 | 1107 |
| Theodore H. Kerry—direct | 2130 | 1112 |
| —cross | 2143 | 1118 |
| Thomas L. Gilbert—direct | 2147 | 1121 |
| —cross | 2162 | 1128 |
| —redirect | 2170 | 1132 |
| Testimony of John S. Pendorf—direct | 2171 | 1133 |
| Offers in evidence | 2172 | 1134 |
| Testimony of John S. Pendorf—cross | 2175 | 1135 |
| —redirect | 2177 | 1136 |
| Offers in evidence | 2187 | 1141 |
| Defendants rest | 2187 | 1141 |
| Colloquy between court and counsel | 2187 | 1141 |
| Transcript of hearing, March 1, 1962 | 2206 | 1150 |
| Rebuttal argument | 2209 | 1150 |
| Testimony of Leo V. Finn—direct | 2209 | 1151 |
| Offers in evidence | 2211 | 1152 |
| Testimony of Leo V. Finn—cross | 2213 | 1153 |
| —redirect | 2226 | 1160 |
| Testimony of Bernard P. Bernsten—direct | 2227 | 1160 |
| Offers in evidence | 2228 | 1161 |
| Testimony of Bernard P. Bernsten—cross | 2245 | 1169 |
| —redirect | 2280 | 1187 |
| —recross | 2282 | 1188 |
| The Court | 2282 | 1188 |
| Offers in evidence and colloquy thereon | 2283 | 1188 |
| Both sides rest | 2290 | 1192 |
| Motion for a judgment for the defendants | 2291 | 1192 |
| Colloquy between court and counsel | 2291 | 1192 |
| Plaintiff's interrogatories and defendants' answers thereto | 3367 | 1195 |
| Nos. 6, 7, and 9 | 3404 | 1195 |
| No. 16 | 3455 | 1199 |
| No. 18 | 3467 | 1209 |
| Nos. 47 and 48 | 3562 | 1215 |
| No. 50 | 3569 | 1221 |
| No. 61 | 3728 | 1225 |
| No. 63 | 3741 | 1236 |
| No. 69 | 3826 | 1239 |
| Defendants' answers to plaintiff's interrogatories | 3835 | 1245 |
| Table II | 3835 | 1245 |
| Table III | 3850 | 1261 |

Record from the United States District Court for the
Northern District of New York—Continued

Defendants' answers to plaintiff's interrogatories—

| Continued | Original | Print |
|--------------------------------------------------------------------------------------------------------------------------------|----------|-------|
| Table V | 3864 | 1270 |
| Table VII | 3874 | 1277 |
| Findings of fact | 4437 | 1283 |
| Opinion, Brennan, J. | 4459 | 1305 |
| Letter of Judge Brennan dated February 21, 1963, re additional findings of fact to supplement the findings already filed | 4499a | 1334 |
| Additional findings of fact | 4500 | 1336 |
| Notice of appeal to the Supreme Court of the United States | 4502 | 1337 |
| Clerk's certificate (omitted in printing) | 4504 | |

PLAINTIFF'S EXHIBITS

| | | |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|------|
| 3—Letter from Leon E. Hickman, Vice Presi- dent and General Counsel of Alcoa to Victor R. Hansen, Assistant Attorney General, Antitrust Division, dated April 2, 1959 | 4505 | 1339 |
| 5—Letter from Frank L. Magee, President, Alcoa to Rome Cable Corporation, dated January 21, 1959 | 4507 | 1340 |
| 6—Letter from Frank L. Magee, President, Alcoa to A. D. Ross Fraser, President, Rome Cable Corporation, dated January 21, 1959 | 4509 | 1342 |
| 7—Telegram from Rome Cable Corporation to J. R. Leadham, New York Stock Ex- change, Dow Jones & Co., Pacific Coast Stock Exchange and T. P. Phelan, Pacific Coast Stock Exchange, dated January 22, 1959 announcing plans to affiliate with Alcoa | 4512 | 1345 |
| 8—Memorandum of Telephone Statement given by A. D. R. Fraser to Paul Windels, Jr., Securities and Exchange Commission, dated January 23, 1959 | 4514 | 1348 |
| 9—Rome Proxy and Proxy Statement, dated March 3, 1959 | 4515 | 1349 |

[fols. 1864-1865] [Title omitted]

Transcript of hearing—February 27, 1962

[fol. 1866] COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Bergson: Before we proceed with the taking of testimony this morning, your Honor, you will recall that at the close of the Government's case, the Government offered a series of some 18 documents relating to these real estate projects that Alcoa has an interest in, and you reserved your ruling on that. I would like to ask if you could consider ruling on it before I put one of my witnesses on, because—

Mr. Melchior: May it please the Court, on that, it is the Government's intention to interrogate one of the witnesses on the documents this morning, probably Mr. Hickman, so if your Honor has any intention of—

The Court: Gentlemen, here is exactly that—I read them, first read them last weekend, and thought of them last night; thought I would discuss the matter with you today at noon. It is just as well that it comes up now. What is the purpose of the documents? Frankly, I can't see anything in them of value either way. What they show is that Alcoa is interested in expanding its market for aluminum, [fol. 1867] and is willing and has entered into arrangements whereby they facilitate the use of their product in certain ventures.

Mr. Melchior: We think it is highly relevant, your Honor.

The Court: On what theory?

Mr. Melchior: On the ground that by this device, Alcoa is in a position to insure that its products are utilized in these projects in which the only connection it has is by the lending of money, and that they do not necessarily own the project involved, but merely advance funds and use this as a wedge or device, and to expand.

The Court: There can't be any dispute, as I would see it, over the fact that this manufacturer devises ways to require the use of its product. So, all right. You have got a big, long, complicated agreement; I don't see anything to it at all.

Mr. Bergson: Well, I couldn't appreciate the relevancy of these documents. I objected to them the other day and I still can't—

The Court: I don't think they are particularly harmful. [fol. 1868] There is nothing hidden or secret about it, as I see. They refer to a lot of negotiations, agreements, whereby the business venture is entered into, no question about it. The object, I suppose, of the Aluminum Company was to have an outlet for its products, and apparently, as I read them, to have the buildings be a show place for the use of aluminum. I think that is all there is to it. Whether their agreement was good or bad, whether they win or lose any money, I am not interested. I would be inclined to think I would sustain the objection to them. One more thing. Each one of them was stamped with notice that they are protected by some protective order entered by some Judge in Missouri.

Mr. Bergson: Yes, your Honor.

The Court: I don't know what that order is.

Mr. Bergson: Well, in that case, in which we also represented Alcoa, the Government filed a very, very broad discovery motion. Judge Moore, out in St. Louis, granted the Government's motion in toto, and on his own motion [fol. 1869] in granting it in toto said, "In view of the scope of this order," in effect, "we will have these documents subject to a protective order."

Now, when the Government got these documents in this other case, the Cupples Case, you are familiar with that, we had discussed it in our pretrial procedures before.

The Court: I know the name, that's all.

Mr. Bergson: The attorneys in that case felt that they might have some bearing in this case. Miss Lungren, who you may remember, who was with Mr. Karp in this case for a while, is on that Cupples case. They called us and said that they were going to make a motion out in St. Louis to have the protective order amended so that they could use these documents in this case. We said we didn't think these documents are relevant to this case, but we certainly are not going to hold you to the protective order and we gave them a letter saying without waiving any rights to our right to objection as to the materiality that they were free

to turn the documents over to this staff in this case. Isn't [fol. 1870] that right, Mr. Melchior?

Mr. Melchior: That is my information, which came from Mr. Bergson by telephone, that in so far as these documents are concerned, they are no longer covered by the protective order.

Mr. Bergson: In so far as this case is concerned.

Mr. Melchior: In this particular proceeding.

Mr. Bergson: This Alcoa-Rome case.

Mr. Melchior: So there would be no problem for the Court here on that.

The Court: The thing that bothers me, of course, is if I go in, let them in, the Defendant can be here a week explaining each of these details on these negotiations. The documents themselves refer to negotiations with different parties, representatives of Alcoa, Mr. Zeckendorf, and all of them, and I can't for the life of me see how they are material when we get down to the ultimate result, and it is not disputed. The Government is taking this kind of position, which is a hard one for me to follow, that what has happened [fol. 1871] after '59 is not particularly relevant.

In their charts they don't put in any record of these conduit, these lines of commerce, to include 1960, saying, "Well, that is more or less unimportant. That what happened afterwards, the question is as to whether or not it is likely to affect competition." Well, if I understand it right, this bunch of papers, this so-called Cuddles, is it?

Mr. Bergson: Cuddles Case. I wish it were.

The Court: That happened after this merger.

Mr. Bergson: I beg your pardon?

The Court: Didn't that happen after this merger?

Mr. Bergson: Yes.

Mr. Melchior: If I may comment on that, your Honor.

The Court: Yes.

Mr. Melchior: The Government didn't fail to bring the statistics up to '60 and '61 because it didn't think it was relevant, but there has to be a cut-off period at some time. [fol. 1872] The Court: Yes, I remember your arguing it very well.

Mr. Melchior: We had to canvas the whole industry to get the statistics and they were based on the latest here at the time—

The Court: I don't think that is quite true. I think this Doctor testified that he had the statistics.

Mr. Melchior: In certain cases we had a universe, but from the companies in the wire and cable, we didn't have industry statistics complete.

Mr. Bergson: But for the universe and Alcoa and Rome they had them.

The Court: That is my recollection. Your argument was just the opposite to what your argument is now. I am going to sustain the objection and keep them out. My reason is I don't think they are important. I think we open this case up to an exploration that is not particularly relevant or important to the ultimate issue that we have here. There [fol. 1873] cannot be any dispute about the happening of this. There is an agreement but whether Zeckendorf conferred with Hickman or Hickman went to New York to confer with anybody else, I don't see any importance to it. If you put them all in, you have to call anyone mentioned in them to explain them and so the Government may urge an inference from them. All there is to it is that they were seeking through a combined financial arrangement to insure that certain buildings or certain structures will be a show place for Alcoa's products and broaden the sales.

Mr. Melchior: There are references in certain of these documents, your Honor, and I am not sure whether you are excluding them all or not, but there are certain references in these documents to the acquiring of properties and the use of the acquired properties, not only Rome but Cupples and Rea, their use in supplying these buildings and the probable effect they would have on keeping out the same products made by their competitors.

Does your Honor have any objection to interrogating [fol. 1874] witnesses on these items and then re-offering them?

The Court: No. You can go ahead. I will stop you if I think you are going too far.

Mr. Melchior: Sure.

The Court: I don't want to get into a controversy—I guess there are a couple of deals in these transactions.

Mr. Melchior: Several. That is going to be the import of the testimony I want to elicit.

The Court: There can't be any dispute about it. All

right. I will sustain the objection and exclude them at this time.

[fol. 1875] Mr. Bergson: I call Mr. MacDonald.

JAMES R. MACDONALD, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination.

By Mr. Bergson:

Q. Mr. MacDonald, will you please state your name and address for the record?

A. My name is James R. MacDonald, I live at 375 Wickwood Road, Westfield, New Jersey.

Q. By whom are you employed?

A. I am chairman and president of the board of General Cable Corporation, 730 Third Avenue, New York City, New York.

Q. Are you chief executive officer of General Cable Corporation?

A. I am.

Q. In what business is the General Cable Corporation engaged?

A. Our main business is in the fabrication of electric wire and cable.

Q. Do you also manufacture conduit?

A. We manufacture a small amount of conduit, yes.

[fol. 1876] Q: How long have you been employed by General Cable Corporation?

A. I started in January of 1940 as assistant to the vice president in charge of sales. I became director of sales in 1941, vice president in charge of sales in 1941—I think I am right on these figures—and executive vice president in 1949. President in 1952, I believe it was, and chairman of the board in 1954 and '56.

Q. And you have occupied those positions continuously since that time?

A. That's right.

Q. Now, Mr. MacDonald, what were the annual sales of General Cable in the year 1961, do you recall?

A. Roughly 167 million dollars. You want the exact figure?

Q. Well, that's close enough.

A. All right.

Q. And what were they in 1960?

A. Approximately 165 million dollars.

Q. Now, Mr. MacDonald, is General Cable affiliated in any way with any copper producer?

[fol. 1877] A. American Smelting and Refining Company owns approximately 36 percent of General Cable Corporation, and in varying percentages of around that same figure has owned, since 1927 or '28, someplace in that period. Their common stock and preferred stock, according to our proxy statement, is 37.28 percent.

Q. Now, does any producer of primary aluminum own any stock in General Cable Corporation?

A. No.

Q. Does American Smelting and Refining own any stock in any primary producer of aluminum?

A. American Smelting and Refining owns in the 30 percent—I don't know exactly where—of Revere Copper and Brass. Revere is a joint owner. I don't know the exact figures, but I would guess in the neighborhood 50—40 to 60, I think the spread is, in a company called Ormet, which produces—

Q. Do you as president and chairman of the board of General Cable consider General Cable to be an integrated aluminum company?

A. No, not at all.

Q. In your wire and cable products, what metals do you [fol. 1878] use as the conductor metals?

A. Whatever the customer wants. We are fabricators. We are not producers of raw materials, so our job and our function is to have the equipment, engineering and the product design to meet a customer's requirements. So we make copper, we make aluminum, we make steel wires, whatever the requirement is. We make brasses and bronzes in the wire field.

Q. You are equipped to make insulated wire and cable, irrespective of what the conductor is?

A. That's right.

Q. Now, in making cable with aluminum as the conductor,

and in making cable with copper as the conductor, can the same machinery be used?

A. Yes, the machinery is fundamentally interchangeable. On the wire drawing side, there is a different dip system required on aluminum versus copper, but it is a minor change-over. But the equipment is the same equipment.

Q. Now, in the conduct of your business, has A.S.R.—American Smelting and Refining—attempted in any way to influence General Cable in the type of conductor metal it [fol. 1879] uses in its products?

A. No.

Q. And the determining factor on what conductor metal you use is the demand of your customer?

A. That's true.

Q. Now, Mr. MacDonald, General Cable purchases aluminum for its aluminum wire and cable products?

A. That's right.

Q. Within the last four years can you tell us what your total purchases of aluminum were? That's 1958, 1959, 1960 and 1961.

A. I will give you our purchases, which are not necessarily exactly in conformance with our shipments. Everybody in a "lifo" business, which our metals are, our accounting structure is on a lifo method of accounting, particularly on raw materials.

Q. And lifo means last in, first out?

A. That's right. So that in any given year our purchases of basic materials may go up or down, depending on our lifo position for that particular year. So that these figures [fol. 1880] will be a little bit out of balance on usage.

Q. But in a period of years they would balance out?

A. That's right. In 1958 we purchased 17—you want exact or round figures?

Q. Well, round figures.

A. 17 $\frac{3}{4}$ million pounds. In 1959, where we had large purchases in December, it was 26 million, 5. In 1960 it was 17 million, 9 and in 1961, 19 million, 3.

Q. Now, of the 17 million 7 that you purchased in 1958, how much was purchased from Revere?

A. 4,140,000.

Q. And from Alcoa?

A. 13,186,000.

Q. And in 1959, where you had 26 million 5, approximately how much was purchased from Revere?

A. Nine and a half million.

Q. How much was purchased from Alcoa?

A. 14 million 8.

Q. And in 1960, when you had approximately 17 million 9, how much was purchased from Revere?

A. Four million nine.

[fol. 1881] Q. And how much from Alcoa?

A. Six million eight.

Q. And in 1961, when you had 19 million 3, approximately how much was purchased from Revere?

A. Three million five.

Q. And how much from Alcoa?

A. Six million three.

Q. I notice that these totals don't—I mean the amounts purchased from Alcoa and Rome don't add up to the total. Do you purchase aluminum from other sources?

A. Yes. Starting in 1959 other sources of aluminum became available, and we like to spread our business around.

Q. Now, have you purchased any foreign aluminum?

A. We purchased some foreign aluminum in 1954 and '55. We did not in the years that you are asking for.

Q. Why didn't you purchase foreign aluminum in these recent years?

A. Well, we had an adequate supply domestically. We like the service of the people we buy it from. We believe in protecting American industry, to be honest about it.

[fol. 1882] Q. But would it be available to you if you desired to purchase it?

A. Oh, yes, sure. Plenty.

Q. The acquisition by Alcoa of Rome Cable took place on April 1st, or March 31st, 1959. Since that time has General Cable expanded its plant capacity for the production of these so-called overlap products which are shown on the product chart here which is defendant's Exhibit AR-20? This is ACSR, all aluminum cable, aluminum line wire and aluminum multiplex.

A. We previously, up to 1959, made aluminum products of that type and other types in our St. Louis plant. We built a new plant in Quincy, Michigan, which came into operation about a year—about, oh, November or December

of 1960, and moved our equipment out of our St. Louis plant up to Quincy, and added to that equipment, so that the capacity of Quincy is probably, oh, twice what it was in the old St. Louis plant. At about the same time we built a plant in Sanger, California and moved some equipment out of our Emeryville, California plant, which was making [fol. 1883] aluminum products, added to that equipment and now that plant at Sanger, California is about half of the capacity of the plant is in aluminum products and roughly half in Emeryville. We have added to our Tampa, Florida plant since that period in the production of aluminum products.

[fol. 1884] Q. I am talking about these particular products.

A. Yes. Well, utility types of products, yes.

Q. Right. Now, Mr. MacDonald, have you in recent years, say from 1956, experienced any difficulty in obtaining your aluminum needs?

A. No. Let me see. '56. When were controls over?

Q. I think controls ended in '54 or '53.

A. Since controls, we have had no problem.

Q. And the problems that you had prior to the period you just mentioned were due to Government control and allocations?

A. Yes. Through Korea all aluminum and copper were on an allocated basis, so we were restricted as to what we could buy.

Q. During that restricted period when you were restricted as to aluminum and as to copper, did you make such products as you could with the material that was available to you? That is not a very clear question.

A. This question I will have to answer indirectly because in any allocated period copper and aluminum per se were controlled materials not as to raw material but the finished product. So that the customer had to get the authority to [fol. 1885] give us a piece of paper that would allow us to get the raw material or make the product for him.

Q. And whatever the customer got you you made for him?

A. That's right.

Q. Did it make any difference whether it was aluminum or copper?

A. No.

Q. Do you have any views as to the future supply of aluminum?

A. Well, I would like to read, I have a copy here, your Honor, or our; it is a draft of our annual report for 1961, which is not in final form, but it goes to our stockholders in about two weeks. And I think in answering your question, and here is the statement I made which I quote:

"With world capacity for production of aluminum well, in excess of demand, producers of aluminum continued in 1961 to operate at reduced capacity. The severe competition for available domestic business resulted in a reduction in September, 1961, in the price of aluminum ingot of 2 cents a pound. This reduction had no impact on the earnings of the corporation under this method of life evaluating inventories."

[fol. 1886] I think that is a better answer to give you.

Q. That is what you are saying to your stockholders?

A. That's right.

Q. Talking about this life method of evaluating your inventories, how does your company purchase aluminum, in terms of firm price as against price at time of delivery?

A. It is our system on all of our basic raw materials to always try to purchase at the price in effect at the time of shipment to us. Because we, over the years, have worked with our customers in the same way, on our finished product. In other words, most of our finished products are sold to the customer with metals being priced in effect at time of shipment. So that we, both sides, the utility and the cable company has taken the gambling effect out of the metal side of the picture.

Q. So if you were offered an opportunity by your supplier to purchase either on a fixed price, firm price basis or on a price in effect at time of delivery, which method would you choose?

A. Price in effect at time of delivery. I am not smart enough to know how metals are going to go.

Q. And you consider this sound business judgment?

[fol. 1887] A. If I may be a little jocular on it, if I were smart enough to know how to make money out of the

purchase and sales of raw materials, I am going to close 32 plants and open a little office in Wall Street to do my speculating there and get out of these labor problems.

Q. Mr. MacDonald, in these products that are on this board, which is Defendants' Exhibit AR-20, is there any foreign competition in the sale of those products?

A. As yet I have seen none. I do believe that some of our customers are bringing in the basic raw material. I have no way of knowing it except through gossip. I have seen as yet no competition on the finished product by the finished wire and cable manufacturer.

Q. As an executive, as the top executive of a substantial company in the wire and cable business and having been in the wire and cable business yourself for over twenty years, do you foresee a probability of any substantial competition from foreign aluminum in these products?

A. Well, again, I would like to read, and I think it phrases a little better than I could offhand, part again of the Chair- [fol. 1888] man's letter to our stockholders under the heading of imports.

"The Import Committee of the wire and cable division of the National Electrical Manufacturers Association formed in 1960 continued its activities to obtain appropriate protection for domestic producers. The indications are that the recently concluded negotiations under the General Agreement on Tariffs and Trade revised the previous government protection of 15 percent ad valorem on imports to 12 percent; the excise tax of 1.7 cents per pound on the copper content of imported wire and cable was not subject to negotiations under the agreement. The current tariffs are completely inadequate to protect domestic producers against the materially lower costs of foreign producers as well as their pricing policies on exports in the United States. The recently enunciated program of the Administration for drastically revising our basic concepts with respect to foreign trade could in its present form have a serious impact on the future of the wire and cable industry. The Corporation is work- [fol. 1889] ing closely with the Import Committee in

preparing constructive proposals on exports and imports for presentation to the appropriate government agencies."

Q. If I were to try to paraphrase that, would it be a correct statement to say that you foresee in the future that foreign competition will probably have an effect on the wire and cable industry in general and on aluminum wire and cable products as well?

A. Yes.

Q. Now, you stated earlier in your testimony, Mr. MacDonald, that General Cable Corporation is in the conduit business as well?

A. That's right.

Q. Where do you manufacture that conduit?

A. In Baltimore, Maryland, near Sparrows Point.

Q. That is what type of conduit, what metal is it?

A. Steel.

Q. In the sale of your steel conduit do you consider steel to be in competition with aluminum conduit?

A. Very much so.

Q. Do you market your conduit on the West Coast?
[fol. 1890] A. Yes, we do.

Q. How do you ship to the West Coast?

A. By boat.

Q. By boat from Baltimore?

A. That's right.

Q. Do you find that in shipping by boat from Baltimore to the West Coast, that your company is at any competitive disadvantage with a manufacturer of conduit located on the West Coast.

A. We could be in a difficult position in his immediate area, but once you get away from his immediate area he can't meet my freight cost. In other words, my freight cost out of Baltimore by boat is roughly the same, whether it is Los Angeles, San Francisco, or Seattle. So, he would only hit me in the one area that he was in.

Q. Which is Los Angeles, is the plant was located in Los Angeles?

A. Yes.

Q. Now, Rome Cable has a plant in Torrance, California, which is in the vicinity of Los Angeles. Do you consider

that you have a competitive advantage over Rome Cable in San Francisco?

A. Yes.

[fol. 1891] Q. Do you consider that you have a competitive advantage over Rome Cable in any of the areas north of San Francisco?

A. Yes.

Q. And any of the area south of San Francisco?

A. Yes. Do you want to go to Hawaii?

Q. No. I would love to, but not now. What would be the particular geographical area that you might be at a disadvantage competitively with the Torrance Plant, if any?

A. I would say in the area, I don't know enough of the freight maps any more, but I would guess within a 50-mile area or 75-mile. It depends on the freight situation.

Q. Of Torrance, within a 50 or 75-mile area of Torrance you might be at a disadvantage?

A. That's right.

Q. Mr. MacDonald—

The Court: Just before you go to that, Mr. Bergson, I don't believe I quite understand that, Mr. MacDonald. Why wouldn't you have an advantage, let's see, you said you would have an advantage, why wouldn't the Torrance Plant have an advantage over you who have to ship from Baltimore [fol. 1892] more, assuming that they are shipping 200 miles from the place of their manufacture?

The Witness: Judge, our freight rates, freight methods, in the United States are not altogether completely logical. The cost of shipping by boat from Baltimore through the Canal to Los Angeles is almost the same or identical as though I ship by boat from Baltimore through the Canal to San Francisco or if I ship from Baltimore through the Canal to Seattle. Now, the manufacturer out there, and we have this problem with our own cable plants, a manufacturer out there, if he has to ship from Los Angeles area, has to go by truck or train or wait for that unusual boat that might hit Los Angeles, and Seattle and I would say his freight cost would be greater than my freight cost.

By Mr. Bergson:

Q. I think one other factor that would help you to explain this for the Judge would be this: Does a plant located on the East Coast pay less for its raw material?

[fol. 1893] A. Sure.

Q. Than a plant located on the West Coast?

A. That's right.

Q. And this is due to the pricing policies in the steel industry?

A. Yes, because of their freight conditions. Freight is a big element on conduit.

Q. Do you know, Mr. MacDonald, whether or not since March 31, 1959, General Cable's sales of aluminum wire and cable products have increased or not?

A. If I could leave out one customer, I would say they have increased. We lost a very large account in 1959, end of 1959, and we shrunk back. A very large account. Since then we have gradually rebuilt our business. Not with that account, I am sorry to say.

[fol. 1894] Q. Let me ask you this, Mr. MacDonald, has the acquisition of Rome Cable by Alcoa adversely affected General Cable in its business?

A. I would say no, not at all.

Q. Do you foresee the probability in the future that this acquisition will affect General Cable in its business?

A. No.

Mr. Bergson: Your witness, Mr. Melchior.

Cross-examination.

By Mr. Melchior:

Q. Mr. MacDonald, on direct examination you were asked by counsel if you considered your company to be an integrated producer of aluminum wire and cable, I believe.

A. That's right.

Q. You stated you did not?

A. That's right.

Q. What do you understand the term integrated producer of aluminum wire and cable to mean?

A. I would say a company that produces from either bauxite or alumina through the cycle.

[fol. 1895] Q. Through the cycle?

A. Of pig to rolling, wire drawing, to the finished product.

Q. Where does your company start, as far as aluminum wire and cable is concerned—with what raw material?

A. We start either with pig or with the rod.

Q. You start with pig or rod?

A. That's right.

Q. And you acquire your pig from others?

A. That's right.

Q. And I believe you indicated that over the period of 1958 to 1961 you had acquired substantial percentages from Alcoa and from Revere?

A. That's right.

Q. Now, I believe you also spoke of a stock relationship between General Cable and American Smelting and Refining, called ASARCO?

A. That's right.

Q. You indicated that ASARCO owns a substantial block of stock in General Cable—I didn't hear the percentage you gave.

A. It's of the voting stock. It is 37.28 percent.

[fol. 1896] Q. ASARCO, you estimated, owns about 37 percent of the voting stock of your company, General Cable?

A. That's right.

Q. I believe you also spoke of a stock relationship between ASARCO and Revere. Did you indicate what percentage of stock ownership?

A. I don't know exactly, sir, but I would guess in the neighborhood of 35 percent.

Q. Something in the 30's between ASARCO and Revere?

A. That's right.

Q. You also spoke of a stock relationship between Revere and a company called Ormet.

A. That's right.

Q. I believe you stated that Revere and Olin each owned about 50 percent of the stock of Ormet, is that correct, just in round figures, something like that?

A. I would say.

Q. And under this stock arrangement, or by collateral agreement, is there any understanding between Olin-

Mathison, Revere and Ormet as to the disposition of stocks of pig aluminum that is produced by Ormet?

[fol. 1897] A. Well, I am giving now my impression rather than actual facts, but I understand in the agreement between Olin and Revere in establishing Ormet, that Olin underwrote 60 percent, I believe is the figure, of the output of the Ormet operation, and Revere underwrote 40 percent of the output of the operation. I believe that's it.

Q. What business is Ormet engaged in?

A. Producing aluminum.

Q. Primary aluminum? Aluminum pig and ingot?

A. That's right.

Q. Now, how many directors are there on the board of General Cable, Mr. MacDonald?

A. Fourteen.

Q. Is this in the year 1960?

A. 1961.

Q. Now, of these fourteen directors on the board of General Cable, do you know how many of these same persons are also officers or directors in -SARCO?

A. Yes. Six.

Q. Six out of the fourteen are also officers and directors in ASARCO. Now, for the years immediately preceding [fol. 1898] the year 1961, do you know whether there have been officers or directors of ASARCO who were also directors of General Cable?

A. Oh, yes, I would say roughly the same percentage.

Q. Has this condition existed for some time?

A. That's right.

Q. For how many years would you say, if you know?

A. My own knowledge, at least since 1940. I presume the records would indicate that it went back to the original formation of General Cable Company in the late 1920's.

Q. I see. Now, do you know of your own knowledge how many directors there are on the board of Revere Copper and Brass in 1961?

A. I do not.

Q. You do not know?

A. I could guess, if you want me to guess. I do not know.

Q. Can you estimate about how many?

A. I don't know.

Q. Do you know what directors on the board of Revere are also officers or directors of the ASARCO?
[fol. 1899] A. Phrase that question again please.

(The pending question was read by the reporter.)

A. I don't know. I don't think so.

Q. You do not think so?

A. I do not think so. I don't know, honestly, but I do not think so.

Q. Do you know a Mr. R. D. Bradford?

A. Yes, sir.

Q. Do you know whether he is a director in Revere?

A. I believe he is.

Q. Do you know whether he is a director of ASARCO?

A. Yes, sir.

Q. He is?

A. I think he is, yes.

Q. Are you familiar with F. G. Hamrick?

A. You phrased your question—or did I misunderstand your question? Didn't you ask me if there were any officers of Revere that were directors of American Smelting?

Q. What I am trying to find out is if any of the officers [fol. 1900] or directors of Revere are also at the same time officers and directors of the ASARCO.

A. If I could ask you the question the other way—are any of the officers and directors of American Smelting directors of Revere, I would say yes.

Q. Yes. Well, now, of the number on the board of directors of Revere—

A. I don't know.

Q. You don't know that. Do you know whether Mr. Hamrick stands in that position?

A. I would not know.

Q. How about J. D. Mackenzie?

A. I would be sure he would be.

Q. I didn't hear you.

A. Yes, he would be.

Q. How about S/E. Strauss?

A. I wouldn't be sure.

Q. How about Mr. E. Tittman?

A. I would believe he would be, yes.

Q. He would be?

A. I think so.

Q. How about R. W. Vaughn?

A. I would think he would be.

[fol. 1901] Q. Now, I believe on direct examination when you were discussing the two suppliers of aluminum to General Cable, and you spoke of Revere and Alcoa, I don't know whether or not you indicated these were the two major suppliers or not, and I ask you are these the two major suppliers?

A. They were in 1958 and '59. And previous to that it would have been Alcoa almost complete. But then in 1960 we started diversifying as other sources came into availability to us. For instance, in the figures I quoted in 1960 we purchased approximately 18 million pounds—17 million 9, with about seven million of that purchased from people in Revere or Alcoa.

Q. Can you state how many other companies there were supplying, if you know?

A. I would say three or four. And in 1961 roughly half of our purchases were a total from Revere and Alcoa, and the other half in round figures from other people.

Q. From three or four?

A. Kaiser; Anaconda.

Q. You say you started diversifying around 1959 or 1960. What do you mean, you started diversifying?

[fol. 1902] A. Buying from more of the other people.

Q. Why did you do that?

A. It's just good business. We don't like to ever have our basic raw materials in the hands of only a few suppliers, but at certain periods that was all we could do. But as Anaconda aluminum came into available source, we started moving in there. As Kaiser started selling rod, we started going to Kaiser. It is just good ordinary business practice to diversify.

Q. In other words, from a business standpoint you feel it is competitively desirable to have a wide number of suppliers and not be limited to—

A. That's right.

Q. I see. You spoke of foreign sources of pig. How readily available are foreign sources of pig, Mr. MacDonald, today?

A. I don't quite understand your question.

Q. Did you purchase any overseas?

A. No.

Q. Why not?

A. I think I explained that. We like the service we get from the suppliers in the United States. We have assurance [fol. 1903] of our records with them that in times of shortage they will take care of us. We do not have to carry big inventories, because they are right in our back yard. They will work with us engineering-wise. Why should we buy from—

Q. There would be more problems involved in purchasing overseas?

A. Of course.

Q. What would some of these problems be?

A. One would be the first question of a much bigger inventory on the part of myself because of shipping time. Much greater gamble on the pricing structure because of the longer shipping time. The question of better inspection, if there was a shipload coming in that was not proper. The question of handling it, getting it back to them is a greater problem.

Q. Do you consider your company one of the leading purchasers of aluminum?

A. No. I would say of the independent aluminum people we are probably a good source; but I don't think in the aluminum field that ten thousand tons a year is a big customer. I don't think it is classified as a big customer; I [fol. 1904] don't know. The aluminum people would know better than I on that.

Q. I want to understand your answer. You say you do not consider General Cable to be a large purchaser of aluminum?

A. We are purchasing in the neighborhood of ten thousand tons of aluminum per year. I believe the American production of aluminum is in the neighborhood of two million tons, someplace in there, so I wouldn't consider ten thousand in relation to two million a big purchaser of the product.

Q. I think your figures—do you think your figures indicate that you are becoming a larger purchaser of aluminum?

A. I think we are moving up as the demand moves up.

Q. From your knowledge of the aluminum wire and

cable business do you think your requirements of aluminum will increase in future years?

A. Yes.

Q. Why?

A. I think we are a better merchandising organization than our competitors, and I think we will get a bigger per- [fol. 1905] centage of the business.

Q. Do you think your requirements for aluminum will increase in the same rate or greater or lesser rate of your requirements of copper for conductor wire and cable?

A. Gee, I wouldn't know how to answer that.

Q. I am asking you as a business estimate now. You have been in the business for some time.

A. I wouldn't think so. I think our percentage of the available aluminum conductor market would be relatively increasing on the same relative basis as our percentage of copper conductor wire.

Q. You think you will keep up the present balance in the future?

A. I think so.

Q. What is the balance today on a percentage ratio basis, if you can state?

A. You have got to interpret with me a little bit.

Q. Well, let's do it—first we can do it on a poundage or tonnage basis.

A. That's the easier way, but you have got to again interpret. Aluminum is one third the weight of copper. So [fol. 1906] ten thousand tons of aluminum per year is the equivalent of thirty thousand tons of copper for a given amount of wire and cable. We would average probably, of our own copper, not total, in the neighborhood of 150 million pounds of copper a year. So if you add 30,000 tons, or 60 million, to that, to the aluminum average, it would come to 210 million pounds total, of which copper would be 150 over 210—75 percent—about 70 percent is copper.

Q. And the ratio is between 60 and 150 for a total of 210 on a poundage basis?

A. Approximately.

Q. And it is in favor of copper, is that right?

A. That's approximate.

Mr. Bergson: Are you sure that was poundage or on an equivalent basis?

The Witness: On an equivalent basis. Not a poundage basis.

Q. An equivalent basis on weight. A weight equivalent base.

A. For one pound of aluminum I get the equivalent in footage of three pounds of copper.

Q. It is on a footage basis then?

[fol. 1907] A. Footage.

Q. And if we put it on a poundage basis, it would be 150 to 20?

A. That's right.

Q. If we put it on conductivity basis what would it be?

A. Two to one.

Q. 40 to 150 in favor of copper?

A. Yes.

Q. And you expect the same ratio to continue as far as you can determine?

A. As far as we can determine, yes.

Q. Are you going to push aluminum more than copper?

A. No. We fabricate. I keep on emphasizing that, that we are not raw material producers. General Cable is a fabricating company. We honestly don't care what the customer wants. We are equipped to make it. That's it.

Q. From your own knowledge of the market, Mr. MacDonald, do you think aluminum is going to replace copper in the electrical conductor field to a substantial degree?

A. I think it already has in certain fields. This type of [fol. 1908] material is probably today—I am just guessing—around 80 percent of the overhead lines today are probably aluminum. My own feeling is that aluminum has made—I don't think the aluminum people will like this statement but I believe aluminum has already made into the wire and cable field its great advance. From now on, I doubt very much whether it will take over many more important elements of the wire and cable field.

Q. Do you think there are certain areas in the electrical conductor wire and cable field that aluminum may never displace copper?

A. Yes.

Q. Would you amplify that a little bit, please?

A. Well, I would say on heavy underground cables it is difficult to believe, unless there is something completely out

of line such as wars, substitution of materials—I can't believe that aluminum will ever take the place of copper in underground cables, because of lower conductivity of aluminum, the conductor gets bigger, the insulation gets bigger, the duct system gets bigger and the economic advantages [fol. 1909] of aluminum on overhead lines are lost. The weight effect is lost because with the duct system you don't care and the duct system takes up the saving in the cost of the conductor. So I doubt in my own mind whether in that field or in the telephone field aluminum will ever become a factor as a conductor.

[fol. 1910] Q. Would you tell us why in the telephone field?

A. For the same basic reason it is a little harder to draw. It is much harder to strip on finer size with your telephone wires in copper moving into the 26 gauge, which would be 28 or 9 gauge in aluminum—you engineers correct me—and I would guess that they are stripping in there on a big, big bare 18 cable and if they nick that aluminum a little bit the aluminum is shot. I believe that the Western Electric Company of the Bell System has been experimenting for many, many years in the use of aluminum conductors for aluminum cable, and it is still in the experimental stage.

Q. How about in the field of extremely fine conductor wire?

A. Well, I would rather have one of our fellows answer that, but I don't believe any of us have been able to find out how to draw anything below, I guess, either 32 or 33. I think I am right. Sam, do you want to—

Q. We are interested in your knowledge on the subject, Mr. MacDonald. I am not sure I understand what you said about it.

A. I do not believe any of us in the wire and cable field [fol. 1911] have found it feasible as yet to draw the aluminum into the finer sizes. I do not believe—well, I don't know what the breaking point is. We can draw copper down to 55 gauge but aluminum, it is some place in the 30s, the breakage size.

Q. Do you think you have as much know how in your company as the other wire and cable companies in this nation?

A. I would think so.

The Court: That is a modest answer.

Q. As a matter of fact, isn't it true that your company is the largest wire and cable company in the nation?

A. That is true.

Q. How about in the field of flexible cords and things like that, what opportunities do you think exist for aluminum in that field, the welding cables?

A. In the welding cable, aluminum is already in there pretty well.

Q. Has it been a satisfactory—

A. Oh, yes. In fact, in certain uses it has better use than copper.

Q. Has some advantages over copper?

A. Yes, because of its lightness. A man can handle a welding coil of aluminum without a helper, more so than [fol. 1912] he can with copper.

Q. It will be lighter, but it will be bigger in the different size?

A. That doesn't hurt it.

Q. How about in other flexible cords?

A. What we know in the industry as flexible cords is the small wires and I would question whether they will ever get into that type of wiring.

Q. I was listening to your testimony about these new plants you opened in various places. You mentioned specifically Quincy, Sanger, California and some additions in Tampa, Florida. And St. Louis, I believe you mentioned. Are those all aluminum expansion or just wire and cable expansion?

A. Wire and cable. But as it happens the one in Quincy, Michigan, is completely aluminum. We are making no copper products there at all.

Q. Your company make any acquisitions of wire and cable companies since January, 1961?

A. I think, as you well know, Mr. Uncle Sam has a suit started against us for the acquisition of seven or eight companies, I believe, are mentioned in the suit. Wait a minute, since what date?

Q. I wasn't fishing for that, Mr. MacDonald, but it is [fol. 1913] all right if you put it in the record. That is why I said take '61, so you wouldn't have to answer that.

A. I didn't think fast enough.

Q. But I will agree it is true.

A. No, not since January, 1961.

Q. I don't know whether I should ask you this question of not, and I am not going to insist on your answering it if you don't want to, because of trade secrets, but you indicated that your sales of aluminum had been constantly up except for the loss of a large customer in 1959, but that after that they had been going up. Is there any reason why you shouldn't identify that customer? If you would rather not, I would not ask for the name.

A. I don't believe anything will be accomplished—

Q. All right.

A. But I will answer backwards to get at what you are asking. The customer was not taken away from us by Rome or by Alcoa or by an integrated company.

Q. Shall I conclude from that that a non-integrated company took it?

A. I don't know what else you can conclude.

[fol. 1914] Q. Is this an unusual situation or a usual situation?

A. I hear so much from our small competitors in the wire and cable business that they can't compete with the other companies, and I always get a thrill when one of them takes an account like that away from me, which he did do.

Q. I am glad to hear that, too, Mr. MacDonald. Now, I think that Counsel directed your attention to the so-called overlapping product board here, and I am not going to go into details, but he did inquire as to whether you get any competition from overseas in these products and I believe your answer was no, and then I believe he asked you did you expect some in the future, and I am not sure what your answer was.

A. My answer is as tariffs are reduced in the United States we certainly do expect competition on these products from overseas.

Q. Then there hasn't been any to date and you think it is because of the tariffs?

A. I think that is what is keeping it out as of today. Now, with the new reduction in the ad valorem from 15 to 12 per cent, my guess is that that might get these products into

that stage, if it gets any lower than the 12 per cent, I am [fol. 1915] definite it will be in that stage.

Q. You think this will be a strong competitive force?

A. I do.

Q. Do you think you will receive price competition from this foreign export? Will it be on a price basis or some other basis?

A. It will have to be on a price basis.

Q. Couldn't be on a service basis very well?

A. No.

Q. For the reasons you enunciated earlier?

A. That's right.

Q. Does General Cable produce any aluminum conduit, Mr. MacDonald?

A. No, sir.

Q. All your discussion with counsel on direct had to do with steel conduit?

A. That's right.

Q. Have you people ever considered going into the aluminum conduit business?

A. We have made, as any company does, a series of studies—we got studies going on now—as to feasibility of going into the aluminum conduit. Whether we will ever or not, I couldn't at this date say.

[fol. 1916] Q. Are you presently considering it?

A. We are continuously considering.

Q. No decision has been made either way as yet?

A. No. That's right.

Q. Now, you mentioned in connection with your shipments of steel conduit out on the West Coast, and you discussed in connection therewith the freight problem and you indicated that you could ship by water from Sparrows Point around through the Canal up into some parts of the West Coast and compete price-wise with the West Coast producers?

A. If it is not made within the same area.

Q. Now, do you mean if the conduit is not made within the same area?

A. That's right.

Q. Of the pipe from which the conduit is made?

A. The conduit. The finished product.

Q. As a matter of fact, how is conduit, and I am refer-

ring to steel conduit, priced? Is it—well, you explain it to me. What is the pricing scheme that is used in the steel conduit that you ship out to the West Coast and the price that you charge? Do you include freight or exclude it? Is [fol. 1917] it f.o.b. West Coast or f.o.b. Clifton?

A. I will be honest, I don't know. We handle a great, great many products in the wire and cable field and practically all of them have a different pricing method. I don't believe I would know, unless you want to give me time to get the information to find out exactly.

Q. No, that is all right. But you do know that you can ship steel conduit into—

A. That's right.

Q. (Continuing) the Los Angeles area and compete with steel conduit being fabricated out there?

A. That's right.

Q. And you have done so regularly?

A. West Coast is one of our better markets for Clifton.

Q. How about St. Louis?

A. St. Louis is not a good market for us.

Q. Why?

A. Because of the freight problem. There are competitors in St. Louis and a competitor steel situation in St. Louis, which would make it prohibitive for us to ship from Baltimore to St. Louis.

Q. How about Denver, Colorado?

[fol. 1918] A. No.

Q. Any of the Rocky Mountain section?

A. Chicago.

Q. What part of the West Coast could you ship and be competitive price-wise?

A. Primarily to the West Coast.

Q. You mean the three states?

A. Yes.

Q. Just the three states?

A. Yes.

Q. Do you ship by rail to all cross country, conduit?

A. Almost never. We do a little thin wall conduit, but not on the heavy side. Let me just add something here for what it is worth. To the best of our knowledge we are about 3 per cent of the market in conduit, so I don't think what

General Cable does or doesn't do is too big a factor in the conduit field.

Q. Are you talking about all conduit now or steel conduit?

A. I would say steel. If we put in everything else it would be 2 per cent. Clifton is a very small company.

Q. Does Clifton just have the one plant?

[fol. 1919] A. Yes, that's right.

Q. I don't know whether you know this or not, but I will ask you this, Mr. MacDonald. Do you know what your purchases of primary aluminum were in the year 1957? Would you have that information? You just have from '58 on.

A. I started with '58.

Q. Do you know what they were for the first nine months in '58, by chance?

A. No.

Q. I have a figure here and I wanted to check the accuracy of it, but if you don't have any figures—

A. I don't have a breakdown.

Q. But you stated that your total purchases in 1958 were seventeen and about three-quarter million pounds?

A. That's right.

Q. Can you give me an idea of what that would be in dollars, in round figures?

A. 28 cents, I guess, would be the best price for it. Multiply 28 by seventeen and three-quarter million pounds—say, 30 cents.

Q. We will make that computation later.

A. About five million, isn't it?

[fol. 1919a] Q. About five million dollars in '58. Yes.

Mr. Melchior: No further questions.

Mr. Bergson: No redirect, your Honor.

(Witness excused.)

The Court: Take a short recess.

(At this point a recess was taken after which the trial was continued.)

[fol. 1920] Mr. Bergson: Nesti.

ANTHONY J. NESTI, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination.

By Mr. Bergson:

Q. Mr. Nesti, will you state your name and address for the record?

A. Anthony J. Nesti, 48 Ruggles Street, Staten Island, New York.

Q. By whom are you employed, Mr. Nesti?

A. The National Electrical Manufacturers Association, 155 East 44th Street, New York City.

Q. For how long have you been employed by the National Electrical Manufacturers Association?

A. Approximately twenty-eight years.

Q. And in what capacities have you been so employed?

A. Various capacities, beginning with clerk, to my present position of chief statistician.

Q. How long have you held the position of chief statistician?

A. Since 1943.

[fol. 1921] Q. Would you describe for the Court what the National Electrical Manufacturers Association is?

A. Well, it is a trade association representing manufacturers of varied electrical products engaged in extending industry services of different kinds to these manufacturers.

Q. And is one of the services performed by the National Electrical Manufacturers Association the gathering of industry statistics?

A. It is.

Q. Now, is the National Electrical Manufacturers Association divided into sections?

A. It is first divided into eight divisions, and then each of the divisions has a number of product groups or sections as we call them, and in some cases the sections are further subdivided into groups. So that we wind up with about 80 or 90 product groups within the association.

Q. Well, now, is there a section in NEMA known as the conduit section?

A. Rigid conduit section.

Q. What does it embrace?

A. Well, it embraces the steel conduit, the aluminum conduit, the steel electrical metallic tubing and the electrical [fol. 1922] metallic tubing and the fittings that go along with those groups.

Q. Does—and I will use the name it is commonly known by—does NEMA furnish statistics to its various member companies on conduit?

A. It does. Both steel and aluminum conduit.

Q. I show you a document that has been marked for identification as defendant's Exhibit AR-6 which is entitled "A summary of net sales to domestic customers form SF-56" dated April 21st, 1961 and ask you if you are familiar with that document?

A. I am.

Q. Would you please describe it to the Court.

A. It is our summary of net sales to domestic customers for products within the scope of the rigid metallic conduit and electrical metallic tubing section of NEMA, and covers both the first half and second half of the year 1960, as well as the figures for the year 1960.

OFFERS IN EVIDENCE

Mr. Bergson: I offer defendant's Exhibit AR-6 for identification.

Mr. Melchior: No objection.

The Court: Received.

[fol. 1923] (Defendant's Exhibit AR-6 for identification received in evidence.)

Q. Now, Mr. Nesti, are you familiar with the Census of Manufacturers?

A. I am.

Q. In the course of the performance of your duties do you come in contact with the Census frequently?

A. We do.

Q. Would you please describe that relationship.

A. Yes. Well, that relationship—you want me to describe it from my personal experience or NEMA?

Q. From your personal experience.

A. That relationship, on a personal experience basis, goes back a good twenty or twenty-two years, and it in-

volves the discussions between ourselves and the Census people on the matter of proper classification of electrical products in their Census of Manufacturers and the accuracy of the resulting data, and these problems were discussed so that over the years the accuracy of Census figures could be improved, because they were, of course, important as what we call benchmark data for our industry.

[fol. 1923a] Q. Now, are you familiar with the Census category known as wiring devices and supplies?

A. Yes, I am.

[fol. 1924] Q. Do you recall when that category was first adopted?

A. Not exactly, but it has been part of the Census schedule for at least 15 years.

Q. When was conduit first included within that Census category?

A. At least beginning with the year 1954, in what was then a more nebulous definition or expression of conduit.

Q. Now, did the Census publish a report on conduit in 1958?

A. It published a report on conduit, but did not publish separate figures for conduit.

Q. And why was that, if you know?

A. Their notation on their advice to us primarily was that the information had been withheld from publication due to the possibility of disclosure of individual company data. We have not been able to learn more than just that.

Q. Now, are you familiar with the report that Census put out on conduit or including conduit in the year 1960?

A. Yes, I am.

Q. And have you examined that report, compared it with your own figures and your own analysis of conduit shipment?

[fol. 1925] A. We have done that.

Q. And what conclusion have you reached in regard to the Census for 1960 as a result of that study and analysis?

A. In this particular case our study of the Census figure in comparison with our own data and knowing who in the way of companies reported to us and what other companies we felt might also be manufacturers of this particular product, our opinion was that the Census figure was on the low side.

Q. Now, in making this evaluation of the factors did you take into consideration between your figures on the one hand and the Census figures on the other hand?

A. These are all factors that are generally applied to any comparisons between Census figures and Nema figures on low provisions. They start out with an evaluation of the clarity of the classification in the report form itself versus the clarity of the classification of the product in our own reports. We include the evaluation of the effect of a definition which is used on the Nema side, a definition of the product which goes further than this, the line statement in the Census report form. We recognize that Census cannot [fol. 1926] go much further than just the line of verbiage due to the tremendous size of the Census program, whereas we can, in Nema, establish a very definite product. This is a matter of evaluation so that we can appreciate how accurate the reports from a company may be under those two sets of circumstances. In addition, of course, we consider the relative difference in the specification that is reflected. In our case, we very definitely cover only sales to domestic customers in the open market. We do not cover exports in our figure referred to in this report which you handed to me. We do not cover interplant transfers. Whereas in the Census we appreciate that they cover total factory shipments whether they be for export or domestic and they also include interplant transfers. We evaluate all those things. And then there is another important item that we consider in our evaluation, and that is the existence or non-existence of so-called basket categories within the grouping of products in this particular field. If we find an all-over item and we find that that all-over item has a very high volume of shipments, then we consider that in our evaluation with the [fol. 1927] thought that perhaps some business might have slipped in carelessly into this basket categories instead of into one of the line items that was specified.

Q. Is there such a basket category in the current report of the Census report for 1960?

A. I would say there is to the tune of fifty three million dollars worth.

Q. And would any of that be conduit?

A. Definitely not all of that would be conduit.

Q. But in your judgment a certain percentage of it could well be conduit?

A. Well, we match our other factors with the fact that there is such a large basket category and assume that a good slice of it might represent conduit.

Q. Looking at Defendants' Exhibit AR-6, how many companies are shown as reporting to Nema?

A. Eighteen companies are shown as reporting to Nema on this particular summary, which was developed at the second half of 1960. However, it does show, too, that a nineteenth company, the Pittsburgh Standard Conduit Company, had reported in the first half of that year and it also shows that Harvey Aluminum Corporation came in only on the second half of that year. So if you take the year [fol. 1928] as a whole, we have nineteen companies reflected in this summary, two of which are represented for only half a year's time.

Q. The fact that one was reflected for only the first half of the year, does that mean that that company went out of the conduit business for the second half of the year?

A. No. This report covers only members of the rigid metallic/conduit and electric conduit metallic tubing section of Nema. If a company chose to withdraw from membership, this report has no longer any reflection from them, and they would be no longer reflected in the summary.

Q. And if a company started reporting in July, does that mean that it was not producing?

A. No.

Q. (Continuing) earlier in the year?

A. No, it does not mean that.

Q. It means what?

A. Simply means they decided to join the Association.

Q. Now, to your knowledge do all producers of conduit belong to Nema?

A. It is our opinion that they do not.

[fol. 1929] Q. Do you know any conduit producers, and I mean producers not sellers, who do not report to Nema?

A. Well, again, in our work we must develop whatever information there is regarding the manufacture of these products. One of the sources that we go to for such information is the Underwriters Laboratories. And there in the Underwriters Laboratory there is provided a list of manu-

facturers of various types of electrical equipment, and in the case of rigid conduit and electrical metallic tubing there is a large list of such manufacturers who are not members of Nema and who were not reporting to Nema in this field. Now, from that list, of course, we can't deduce that they are all bona fide manufacturers of rigid conduit or electrical metallic tubing, but it is our impression that there are some who are.

Q. Let me ask you about some. Is Youngstown Sheet & Tube on your list?

A. Yes.

[fol. 1930] Q. Is Youngstown on the NEMA list of reporting companies?

A. No, Youngstown is not on the list of NEMA reporting companies.

Q. Do you know whether Youngstown is a substantial producer of conduit?

A. I have no idea.

Q. Is the Aluminum Rigid Conduit Corporation on your list?

A. No, it is not.

Q. Is Channel Master on your list?

A. No, it is not.

Q. Is Hazelwood Engineering on your list?

A. It is not.

Q. Hazelwood Conduit, I guess it is called.

A. Hazelwood Engineering Equipment.

Q. Is Jasco on your list?

A. Jasco is not.

Mt. Melchior: Counsel, may we interrupt a minute? What list is he referring to?

Mr. Bergson: The list of companies that he says—

Mr. Melchior:—report to NEMA?

[fol. 1931] Mr. Bergson: Yes.

Mr. Melchior: I just wanted to clarify that.

Q. And I think you testified earlier that Pittsburgh Standard was on your list for the first half of the year, but resigned its membership and is not on your list for the second half of the year.

A. Second half.

Q. Mr. Nesti, I would like to invite your attention to certain of the charts that the government has put in evidence in this case, and I invite your attention first to a chart entitled "Value of shipments of conduit in the United States, 1960."

The Court: What is the number of the exhibit?
Mr. Bergson: Exhibit No. 455. GX-455.

Q. Now, you will note that that chart originally had the industry total at 120 million dollars, and it was subsequently amended to \$125,700,000 and some dollars. From your study of the NEMA statistics and your comparison with available material from the Census, is it your opinion that this figure adequately states the industry total for conduit in the [fol. 1932] United States?

A. I would say that neither the original figure, which incidentally is the last figure which we have—it is the original figure on this exhibit is the one that appeared in the official Census release of this industry—neither that figure nor this revised figure would in my opinion represent the total volume of business done in this field.

Q. Is it too high or too low?

A. I would say it is too low. Appreciably too low.

Q. Now, would you please turn to the next chart, which is government Exhibit 459 and the succeeding chart which is government Exhibit 460, both of which show an industry total as reported by NEMA for the year—for aluminum rigid conduit and EMT—for the year 1960. That shows a figure of \$6,709,000, and that figure was taken from, I assume, defendant's Exhibit AR-6.

A. It is the same figure.

Q. Now, does that figure represent the industry total of aluminum conduit, so far as you know?

A. I would say it does not, because some of the manufacturers whom we feel are active in the aluminum field are not reported in the NEMA figure.

Q. So that what NEMA figures purport to show are the total figures of companies reporting to NEMA, and not the total figure of the industry as a whole?

A. Exactly.

Q. And there are companies—or, are there companies who

are in the aluminum conduit business who do not report to NEMA?

A. It is our feeling that there are.

Q. Well, does Channel Master report to NEMA?

A. No, Channel Master does not.

Q. Does Aluminum Rigid Conduit report to NEMA?

A. No, they do not.

Q. Does Hazelwood report to NEMA?

A. They do not.

Q. Does Jasco report to NEMA?

A. They do not.

Q. Are there any others I may have overlooked?

A. You are speaking specifically of aluminum now?

Q. Yes.

[fol. 1934] A. No. That is, in the sense that you have covered them originally. Actually, there are many more companies in this Underwriters list, but again we can't say.

Q. But you don't know whether they are actually in production?

A. Can't say.

Q. Now, Mr. Nesti, I invite your attention to government Exhibit 461 which purports to show the sales of steel conduit, rigid and EMT, in the United States by Rome Cable Company and the industry. I am asking you to direct your attention solely to industry figures alone. Is the total shown in that chart for the year 1958 and the first half of the year 1959 the total industry sales of such products in the United States?

A. I would say it is not.

Q. And why is it not so?

A. Well, I don't have all the reports here for that year, but this exhibit does say it is the industry total reported by NEMA, which again could only be the total of companies reporting to NEMA and not the total industry, for the same reasons we have just given.

[fol. 1935] Q. Would you know whether Youngstown reported in 1958?

A. I am sure they did not. Nor any of these other four or five companies that you called out. And in addition, Harvey Aluminum, of course, did not report in 1958 because they did not come into NEMA until the second half.

Q. Well, I think the evidence was that Harvey Aluminum wasn't producing at that time.

A. I see.

Q. Now, I invite your attention to government Exhibits 456 and 457. This chart purports to show the sales of steel and aluminum rigid and EMT in the United States by Alcoa, Rome and the industry as does chart government Exhibit 457. There the total sales reported by NEMA is \$116,697,000. Would you say that this accurately portrays the amount of these products sold in the United States?

A. No, it does not.

Q. And why is that?

A. Because, again, the figures cover only the total of the data reported by companies who are members of NEMA.

Q. Now, Mr. Nesti, in the course of examining these [fol. 1936] statistics and making the comparison with the Census figures, did you undertake to find out how many companies reported to Census for 1960?

A. Yes, we did. We asked about the number of companies. It is a well known fact that the Census Bureau cannot, under existing law, divulge the names of the companies reporting, but they can tell you in most cases the number of companies that reported. And in this case for the year 1960 they indicated that 19 companies had reported to them under their census figure for rigid conduit.

Q. And you had in your figures—?

A. By chance, exactly the same number of companies.

Q. So that would you conclude from that that less than all of the companies reported to the Census in 1960?

A. Well, I would conclude two things. One that very definitely less than all the companies reported to the Census; and in addition I would raise a question as to whether those 19 were identical companies, which of course we cannot determine.

Q. In making up your statistics for NEMA, do you include [fol. 1937] clude foreign sales?

A. We do not.

Q. Does the Census include foreign sales?

A. May I direct my answer specifically to the summary I have before me?

Q. Certainly.

A. The figure we are discussing—this report covers only

domestic sales. We have other production statistics that do, some of them, get into export sales.

Q. Does the Census figure include foreign sales?

A. The Census figure includes total factory shipments, regardless of where they go.

Q. That means foreign sales?

A. Including export.

Q. Inter-plant shipments?

A. Yes.

Q. Do your figures include inter-plant transfers?

A. Our figures do not.

Q. So that to the extent that your figures may be lower than the Census figures, this could be attributed to three facts; one, the number of companies reporting to NEMA; [fol. 1937a] two, the Census does not report inter-plant—you don't report inter-plant transfers and third, you don't report export sales.

A. Exports.

[fol. 1938] Q. Now having reviewed these charts and discussed this, I ask you again whether it is your opinion that the Census figures that we have read from these charts are accurate or inaccurate?

A. It is my information that in this particular case, this particular product, the Census figure is not accurate. It is on the low side.

Mr. Bergson: Your witness.

Cross-examination.

By Mr. Melchior:

Q. Mr. Nesti, you don't have much faith in the statistics that Nema has come up with in the conduit field, I take it?

A. I have a great deal of faith in the Nema figures overall, including those in the conduit.

Q. Now, I am talking about this specifically, these conduit figures.

A. I have a great deal of faith in them.

Q. And you think they are accurate?

A. I think they are.

Q. You think they are complete?

A. They are complete, as far as I know.

Q. I didn't think this was the import of your testimony on direct examination.

[fol. 1939] Mr. Bergson: I think that he said, Mr. Melchior, was, that they were complete in so far as the companies reporting to Nema are concerned.

Q. But they don't include what you consider to be the whole industry, I take it?

A. No.

Q. They fall short of them, Nema does?

A. That's right.

Q. You testified with respect to Census figures?

A. Yes.

Q. And you find there are some disagreements between the Census totals and your totals?

A. I do.

Q. And you don't think your totals are complete?

A. That's right.

Q. In fact, you know they are not complete?

A. That's right.

Q. And you say comparing your figures which are not complete and Census' figures which are complete, yet you say that Census figures are not accurate?

Mr. Bergson: I object to that.

The Court: Sustained.

The Witness: No, that is a wrong inference. It is not in the overall collection and compilation in comparison of [fol. 1940] Census figures. There are some Census data that are very accurate.

Q. I would like to talk only about conduit.

A. In this case Census measures have not yet achieved the accuracy that we feel they should.

Q. And this is your opinion?

A. This is my opinion only.

Q. Let me ask you this, Mr. Nesti, you said over the years you have been discussing with Census' representatives statistics which your Association collect; is that right?

A. That's right.

Q. And you have discussed among other things conduit statistics?

A. Steel conduit.

Q. Steel conduit and aluminum conduit statistics?

A. We have.

Q. And a wide variety of other statistics which are collected by your organization?

A. We have, yes.

Q. Do you approach Census to discuss this or do they approach you?

A. This works both ways. They approach us at times and we approach them.

[fol. 1941] Q. They use you as a source of information, as a matter of fact, don't they?

A. Yes.

Q. They use other trade associations and other statistical covering organizations, too; don't they?

A. Yes, they do.

Q. And they do this periodically?

A. They do.

Q. Each time they come out with a new total they canvas the industry and people like yourself for what purpose?

A. Towards long range improvement of all statistics.

Q. To determine whether or not their statistics are complete; is that one of the things?

A. That is one of the stages.

Q. When was the last time you spoke with Census' representatives concerning the conduit statistics?

A. I did not personally discuss it with them, but a representative of our department attended sessions with the Bureau of Census when they developed the report form for the year 1960.

Q. Who is your representative?

A. My assistant in my department, Howard Hoover.

Q. Howard Hoover?

[fol. 1942] A. Howard Hoover.

Q. Did Mr. Hoover inform you the import of his discussion with Census the last time he discussed conduit statistics with them?

A. At the time he discussed this particular form with them, unfortunately the need for discussion was on the matter of the wire device products in this form and not on the rigid conduit. It was our understanding that this being a new annual commodity survey and not a regular Census report that it was only to cover wiring devices.

Q. My question was: when was the last time you discussed with Census conduit statistics and you informed me Mr. Hoover discussed them.

A. We talked about the final discussion with Census on the form which includes the conduit items. But specifically we have no recommendations or discussions on the conduit items on that form.

Q. I ask you again, when was the last time you or any of your representatives discussed conduit statistics with Census?

A. That would be for 1958.

Q. You did not discuss the 1960 Census with them then, with respect to conduit?

[fol. 1943] A. You mean since it was released?

Q. Since it was released.

A. No, we have not.

Q. Did you discuss the conduit statistics before they were released with the Census people?

A. In 1960?

Q. In 1960.

A. No, we did not.

Q. The 1960, which is contained on—

A. We did not.

Q. You did not. No one in your organization did?

A. We did not.

Q. For the record, I am referring to the form entitled "Wiring devices and supplies, 1960, which, I guess it is not marked—

The Court: If I understand it right, this man Hoover discussed that form which included conduit; that's right, is it?

A. May I clarify it further, Your Honor?

The Court: Yes. Sure.

The Witness: This 1960 form is not part of the regular census of manufacturers. It is a new separate and distinct form called an annual commodity survey. And we were led to believe that the annual commodity survey for the [fol. 1944] year 1960 was to cover wiring devices, which is only about the first half of that form. Unfortunately, I, as manager of my department, discovered too late that the form when it came out included all of the wiring supplies,

including rigid conduit as well as the wiring devices. At that stage it was entirely too late to make any recommendations.

The Court: All right.

The Witness: However, this only has to do with the report form. Now, the figures have only become available in recent period. They don't come out that fast.

By Mr. Melchior:

Q. You are familiar with wiring devices and supplies for 1960?

A. I am.

Q. GX-497 for Identification: Are you familiar with that form?

A. May I see it?

Q. Surely (hands document to witness).

A. I am.

Q. Is that the one you have before you?

A. Yes, that is the only have before me.

[fol. 1945] Mr. Melchior: Make that 498, Mr. Reporter.

Mr. Bergson: GX-498?

Mr. Melchior: For identification.

Q. Now, I ask you to turn to the second page of that total and down in the middle of the page they have a category entitled "Electrical conduit and electrical fittings," and under that they have two sub-headings. What are these two major subheadings?

A. Steel and—

Q. No, no, before that.

A. Rigid conduit and electrical metallic tubing.

Q. Now, under each one of those subheadings under electrical conduit and electrical fittings, there are two major headings, one is rigid conduit and the other electrical metallic tubing?

A. That is correct.

Q. Under the subheading rigid conduit there are two other subheadings, and what are they?

A. Steel and Other.

Q. And these two subheadings appear under electrical metallic tubing also?

A. They do.

Q. If you know, will you state what basis is used for determining what goes into the category steel and what goes [fol. 1946] into the category "Other," under rigid conduit. Now, this is the Census report.

A. These are not sub-categories on our reports. They are sub-categories of the Census report.

Q. I am asking if you know.

A. I do not know.

Q. Now, I direct your attention to electrical metallic tubing, where they have two categories, one called Steel and the other one called "Other," and I ask you if you know what goes into these two categories on the part of Census?

A. Are you asking me what I know or what I think?

Q. Only what you know, Mr. Nesti.

A. I would not know.

Q. You do not know. Now, I direct your attention to AR-6 for identification.

Mr. Bergson: AR-6 is in evidence.

Q. AR-6 in evidence.

A. Which is that?

Q. This is the summary of net sales to domestic customers FS-56?

A. Yes.

Q. Do you have one of them before you. This is a publication of your association?

[fol. 1947] A. It is.

Q. Now, I ask you, if you know, what is included in your category "Aluminum group"?

A. I do.

Q. Would you state for the record what is included in that category where you have a total for the second half of the year of 6,709 in seven companies?

Mr. Bergson: Six million seven hundred and nine thousand.

Q. Six million seven hundred and nine thousand dollars in seven companies. What is included therein?

A. Included in that group are six items, specifically: Original aluminum conduit, elbows, threaded couplings, nipples, the last three of which are commonly furnished on or

with rigid aluminum conduit. Also aluminum electrical metallic tubing and also elbows customarily furnished on or with aluminum electrical metallic tubing.

Q. Now, what is the seven C-o-s mean, following under the six million dollar figure?

A. That means seven companies.

Q. What do you mean by seven companies?

A. It means that seven Nema member companies report the figure in this particular category.

[fol. 1947a] Q. Can you identify the seven companies that report?

A. Yes. They are Harvey Aluminum, Incorporated; Kaiser Aluminum and Chemical Sales, Incorporated; National Electrical Division of H. K. Porter, Company, Inc.; National Supply Company, the tubular division; Reynolds Metals Company; Rome Cable Corporation and Wheatland Electrical Products Company.

[fol. 1948] Q. Was the first one you mentioned Harvey? I didn't hear.

A. Harvey Aluminum.

Q. Harvey Aluminum. Now what do these seven companies report to you? Precisely what?

A. They report to us their net domestic sales of these products which I read off.

Q. Net domestic sales?

A. Net domestic sales.

Q. Now, if you know, are all the sales made by these seven companies of conduit—is it conduit produced by these seven companies? Do you understand the question?

A. I do not.

Q. I will rephrase the question. You have seven companies here which have reported to you sales of aluminum conduit and these other aluminum things you have referred to, EMT and certain accessories. Do you know whether these companies manufactured these products themselves or did they purchase them for resale? Do your forms indicate this information?

A. No, our forms do not indicate that information. However, our instructions specifically ask for the report of sales [fol. 1949] of products under their nameplate or trade name, whether or not it was manufactured for them.

Q. Can you tell from your forms that are mailed in to your organization whether these companies manufactured them themselves or whether they purchased them for resale, in each case?

A. We can only assume they have followed our instructions, which are on the first two pages of our report form, where specifically we lay out instructions so as to avoid duplication in reporting volume of business.

Q. Would you read the instructions into the record, please?

A. For this particular question the instructions read this way: "Include in your report products manufactured and sold by you."

Q. Manufactured and sold?

A. And under that heading, "Include in your report all products manufactured by you which bear your trade or identifying mark on the product and which you sell in the open market." In addition, these instructions include this one: "Include in your report products manufactured by you and sold by other manufacturers under your trade [fol. 1950] name." And this is further explained: "Include in your report all products manufactured by you which bear your trade or identifying mark on the product, and which are sold by any other manufacturer, provided he does no further processing or assembly work on them."

There is a further instruction: "Products manufactured by you which are sold by a company which is not an electrical manufacturer and which bear such company's trade or identifying mark on the product." This is to be included in the report.

Finally, "Products purchased from any other manufacturer and resold with your trade or identifying mark on the product." This type of operation is referred to in the NEMA by-laws as promoting the manufacturer.

Q. Now I ask you, Mr. Nesti, under that set of instructions would it be possible that the same conduit would be reported by two or more companies?

A. Bearing in mind that these figures form the basis for dues charges to the sections and to the individual companies, I would say that it would be highly improbable. [fol. 1951] Q. What is your answer? No?

The Court: Highly improbable.

Q. Are you familiar with the——

The Court: We better recess until 2:10.

(Whereupon, at 12:50 p.m. an adjournment was taken until 2:10 p.m.)

[fol. 1952]

AFTERNOON SESSION

APPEARANCES: Same at Morning Session.

The Court: All right, gentlemen.

ANTHONY NESTI, resumed the stand and testified further, as follows:

Cross-examination. (Continuing)

By Mr. Melchior:

Q. Mr. Nesti, on direct examination this morning you indicated several reasons why you thought that the Census totals with respect to conduit were low. Would you reiterate those again, please?

A. The reasons that I provided were that in comparison with our figure we felt that there was an additional amount that would be accounted for by manufacturers of conduit who were not represented in our data and should be represented in the Census data. That was one. The other factor was one of companies which we know are not included in our data but which we know should be included in the Census data.

The third factor has to do with interplant transfers where again we do not include it in the Nema figures but they are [fol. 1953] supposed to be included in the Census figures. So those were the three factors.

Q. Did you not mention something about Underwriters' lists?

A. In referring to the Underwriters' lists, I referred only as a reference as to what other manufacturers there might be of conduit.

Q. Are you familiar with the Underwriters' lists?

A. To the extent that it covers this particular product, I am.

Q. This particular product?

A. Yes.

Q. Yes. I show you Government's Exhibit 415 for Identification and ask if you recognize it. This purports to be a—well, you state what it is, if you recognize it.

A. I don't recognize this particular one. I have extracted a list of companies from Underwriters' lists. Whether they are the same Underwriters' bulletin or not, I can't be sure. It does not start out with this heading.

Q. Would you take a look at this and see what this purports to be, it is just four or five pages, and see if it is not [fol. 1954] the same list that you got your list from. If you would rather look at the original of this, maybe this would be a little more familiar to you. Would you like to look at this one? Would that help you? That is the whole thing.

A. I will see in a moment. I believe that part of it that begins somewhere around the bottom of page 7, beginning with rigid conduit, is more familiar.

Q. Rigid conduit?

A. The first part of this covers liquid type flexible metallic conduit. I am not familiar with that.

Q. Let's start with conduit, rigid ferrous metallic.

A. As I say, that is back here, on page 57.

Q. That is the part you are familiar with?

A. And it goes on to page 58. And I would say that this again may not—I am not sure whether it is the same issue of the bulletin, but this has some familiarity to me.

Q. All I want to ask you about that, Mr. Nesti, does this list include the names of companies—strike that. What does the Underwriters' Laboratories' list purport to be?

A. A list of manufacturers who purchase labels under [fol. 1955] Underwriters' labels services for various types of products.

Q. And with respect to electrical conduit what does it purport to be?

A. List of manufacturers who purportedly purchase labels for use on rigid conduit.

Q. Is the list limited to manufacturers of conduit?

A. No. Not necessarily.

Q. It includes others?

A. I should correct that to say companies which manufacture and sell and/or sell conduit.

[fol. 1956] Q. In other words, there are included in the list a number of resellers of conduit?

A. Yes.

Q. Are there a substantial number of resellers?

A. I don't know.

Q. Are you familiar with the companies that manufacture conduit and those that resell conduit?

A. I am familiar with the companies who are in our association. I am somewhat familiar with a few of the companies who are on this list. I am not at all familiar with the balance of them which is the bulk of them.

Q. But you do know this list includes a number of companies who are merely resellers of conduit as opposed to fabricators?

A. It is possible.

Q. You don't know?

A. I am not sure.

Q. All right, let me ask you this about the companies that have reported to your association. I believe you listed—and with particular respect to aluminum conduit—I believe you listed seven reporting companies, is that correct?
[fol. 1957] A. That's right.

Q. Which if any of those seven companies that reported to you are resellers as opposed to fabricators?

A. We do not obtain specific information as to whether a company manufactures and sells or sells only.

Q. You don't know that?

A. No, sir.

Q. As a matter of fact, all seven of them could be resellers as far as you know?

A. It could be.

Q. It could be. Now, I show you defendant's answer to Interrogatory 56, which purports to list a number of companies engaged in the rigid aluminum conduit business, and there are indications following the name of each company, and it indicates for September, 1960 and for April, 1959 whether these companies are producers as indicated by a "P", or sellers only as indicated by a "S". Now, I ask you if you would look at that list for the name of Wheatland

Electrical Products Company, which is one of your reporting companies, and let me know in the year 1960 whether [fol. 1958] it is listed as a producer or a seller.

A. Is this a list for the year 1960?

Q. There is a column which indicates 1960 at the top.

A. This list marks them as a producer.

Q. Wheatland? In 1960?

A. Well now, you say current date—I asked whether this list was for the year 1960.

Q. No, I asked you to look in the column—

A. Up above?

Q. —entitled 1960.

A. You mean September 1st, 1960?

Q. Yes.

A. What does the “current date” stand for?

Q. Current date I am sure would be the date of the interrogatory; but we are interested in 1960.

Mr. Bergson: The current date is April, 1961.

Q. April, 1961. But we are interested in the year 1960. What does it show for Wheatland?

A. What does “M” stand for? No, there is nothing at all in 1960.

Q. It doesn't indicate they are a producer in 1960? [fol. 1959] A. No, it does not.

Q. Now, I ask you to look up the name National Supply which is a division of Armco.

A. National Supply? On this list it is indicated by an “S” which I presume means seller.

Q. Seller. That's correct. In other words, Mr. Nesti, if we take the total figure that AR-6—which is your FS-56—indicates for the second half of the year 1960, of the seven companies who reported, if those interrogatory answers are correct from which you have just read, two out of the seven were not producers?

A. I only—my only comment there was there is no “P” and no “S” on that list. I don't know whether that means they are producers or sellers.

Q. Or neither.

The Witness: Your Honor, could I have this clarified?

The Court: Yes, if you can.

The Witness: Am I to assume from that list if there is,

no mark of a "P" or an "S" that it would be one or the other?

[fol. 1960] Mr. Melchior: This is what—

The Court: I don't know. The fact is there is no mark either way. I don't know what you are to assume.

Mr. Melchior: The fact that—I will have to answer—it is a defendant's answer to our interrogatory. The fact that there is no "P" indicates that they are not a producer. The fact that there is no "S" indicates that they are not a seller. I will stand corrected by counsel—is that correct, Mr. Bergson?

Mr. Bergson: You are right.

The Court: Maybe they just ran a restaurant. I join with the witness.

By Mr. Melchior:

Q. Now, Mr. Nesti, I am not too clear as to certain of your testimony this morning, when you were referring to a basket category. Would you go over that testimony again? To what were you referring when you talked about a basket category?

A. May I choose my words, your Honor, to clarify this? [fol. 1961] A. We need to go beyond just a direct answer, if I may be allowed. The work of clarifying Census classifications and Census statistics is a long, long term job. It is only when you have a large volume shown in an "all other" item. And there are different kinds of "all other" items. Not elsewhere classified. Not separately provided for. Not elsewhere specified. Language of that kind. If it shows a large volume of shipments after a survey has been completed, this brings the attention of both industry and the government on a problem area, because generally "all other" should not have large volume figures. They should, comparatively speaking, have lower volume figures, and so it indicates if you do have a large volume figure there is a classification or an instruction problem or an editing problem on the part of the Census report. And these are the areas where we give special attention in order to improve the Census report which is something both the industry and the Census Bureau wish to do. So these classes of "all other", regardless of how they are indicated on the Census, have become known as the basket category, the place where

[fol. 1962] a figure might be reported because of the lack of more detailed information on the part of the company, or where there wasn't sufficient information available to the Census editing clerk to peg it at some particular spot. That's why it is called basket. It is thrown into the basket. [fol. 1963] Q. Now, did you characterize any of these Census categories on Government's Exhibit 498 as a basket category?

A. There were two such categories. One reads: "Other electrical conduit including underground conduit and fittings, molding angles, molding outlets and molding junction boxes." The second item reads: "Fittings other than those listed above, conduit and electric metallic tubing connectors. Service entrance, et cetera, and service cables." These two items were separate items on the report form. In the summary they are combined and there is a figure of fifty three million dollars. And this is what we refer to as a basket category because of the terminology, "Other than those listed," et cetera, and things of that kind.

Q. Now, directing your attention to rigid and EMT conduit of both steel, steel and aluminum together?

A. Yes.

Q. Now, are you suggesting or is it your testimony that figures with respect to EMT and rigid conduit, either steel or aluminum, may be included in this basket category?

[fol. 1964] A. We have no way of knowing, but it is our feeling that for some reason or other there may be some volume in that basket category.

Q. But you have no way of knowing?

A. We have no way of knowing.

Q. Is there anything that leads you to believe that it might be in there?

A. The thing that leads me to believe that it is a combination of factors which I described in my earlier testimony as to the relative merits of the two figures that purport to measure this business.

Q. But if it could be demonstrated to you that all conduit, steel and aluminum, both rigid and EMT are included in some other category, then your term "basket category" would have no relevancy at all to this testimony with respect to conduit; would it?

A. If it could be proved, yes.

Q. I see, fine. Now, I would like to ask you again about this same form or this same report, Government Exhibit 498 for Identification. And another thing I didn't get from your testimony this morning too clear, I believe you made some remarks to the effect that the classification or the [fol. 1965] language used in the reporting form with respect to conduit by Census was not too clear. Would you enlarge on that a little bit so I can get that point clearly in my mind.

A. All I said was that in Census classifications they do not have the specific definition behind each item. Whereas in the Nema items we have a specific definition which I read into the testimony or into my testimony.

Q. You feel that the Nema explanation is clearer and simpler than the Census?

A. I think so.

Q. Would you read into the record from Government Exhibit 499 for Identification, which is the reporting form what is called for under the rigid and EMT categories. First, let me ask you if you think these are the, if you think I have bracketed properly the items of conduit we have under discussion today, which are EMT and rigid, both aluminum and steel. I have tried to bracket that and only that. Now, do you think I have bracketed that proper, and, if so, would you read into the record what is called for by this form? [fol. 1966] A. I will. And may I point out that this is not only the conduit but the fittings.

Q. It includes fittings. I see. Now, if you will read that into the record.

A. "Also electrical conduit and conduit fittings, rigid conduit, standard weight, including couplings, nipples, bends and elbows," and under that "Steel and Other."

"Electrical metallic tubing (thin wall conduit) including couplings, nipples, bends and elbows. Steel and Other."

Q. Now, let me ask you this, Mr. Nesti, if you were reporting steel rigid conduit would you know where to report that?

A. Yes, I should know.

Q. If you were asked to report EMT steel conduit, would you know where to report on the Census form?

A. Yes, I should know.

Q. If you were asked to report aluminum rigid conduit, would you know where to report it?

A. There I would raise a question. And the reason I would raise a question, it would depend on what kind of a company I was. If I was primarily an aluminum product manufacturer, I receive one Census form for my industry. [fol. 1967] If I am a small manufacturer of aluminum conduit, by that I mean a small volume; I would not receive this Census form. Therefore, as that manufacturer, I would report my aluminum conduit in the all-over item which appears at the end of my report form. This is one of the complications of reporting. I would submit my report. If my figure is sizable the Census Bureau will then send me this report to fill out so as to get a further total breakdown.

Q. My question was—

A. If it is not sizable I wouldn't get such a form and I wouldn't know where that figure would go.

Q. My question had to do with this form. If you were reporting aluminum rigid conduit, would you know where to report it on that form?

A. With my knowledge of the form and our discussions with the Census, I personally would know.

Q. You would know?

A. Yes.

Q. Would you know where to report EMT aluminum conduit on that form?

A. Yes.

Q. And would all of these reports you are making be [fol. 1968] in the material that you read into the record?

A. I am not sure what difference this kind of language would make that goes in, that goes in with our definition. You are asking what I would report and therefore, I must refer to what I know about our own definition, which shows the volume of products customarily furnished on or with rigid steel conduit. And the same is true with aluminum furnished on or with. There is no comparable language in the Census report. If I sold them separately, then I would report them. If I sold them on the conduit, I might feel I should not report them.

Q. What are these other products?

A. I am talking about the language inherent in our definition, which not only lists the items but specifies they are to be reported whether they are furnished on or with.

Q. Are you talking about your Nema form or Census report?

A. You were asking what I would do.

Q. On the Census form?

A. Yes. But I would have to interpret what I would do along the lines of my understanding of these products which include the additional knowledge of what we have as in [fol. 1969] structions.

Q. Again I ask you if you were reporting EMT aluminum conduit under this form, where would you report it?

A. The conduit I would report under this conduit item which I read.

Q. Fine.

A. The fittings—

Q. I didn't ask you about the fittings but I will, if you would like me to. We are talking about conduit, not fittings. Since you raise the question, where would you report fittings under the Census report?

A. Here I would not report until I raised the question as to what fittings I should include.

Q. All right. I didn't ask about fittings.

A. This is perfectly permissible.

Q. In other words, you wouldn't know where to report fittings; is that it?

A. I would verify whether I should report fittings.

Q. All right. You think it is possible that some of the aluminum conduit and steel conduit manufacturers report fittings under this heading that we read into the record. Do you think that is possible?

A. I think they have reported.

[fol. 1970] Q. Do you think it is probable? You think they have, as a matter of fact?

A. I would say some of it has and some of it has not. My feeling is that some of these fittings have been reported under the basket category and I draw your attention specifically to the fact that one of these basket categories has the confusing language of the metallic tubing connectors. This might lead the manufacturer to report the volume there instead of in one of these items.

Q. Now, are there any other types of electric tubing other than aluminum and steel, to your knowledge?

A. I don't know.

Q. You don't know. Now, have you read into the record, Mr. Nesti, the instructions you used for your Nema form?

A. Yes.

[fol. 1971] Q. Was that the lengthy one this morning—those were your instructions?

A. That's right.

Q. They are much simpler you think than the Census instructions?

A. I didn't say that, and I don't think—

Q. What did you say?

A. I don't think they are—I didn't make any observation as to whether they were simpler or not.

Q. Do you care to make any observation by way of comparison?

A. I don't think any instructions, when you want to clarify statistics, are ever simple. I just think they are more clear as to the elimination of duplicate reporting.

Q. Do you know whether the Census form includes or excludes inter-plant transfers—and I am referring specifically to GX-499 for identification?

A. It includes inter-plant transfers.

Q. Now, do you know, with respect to aluminum and steel rigid conduit, what sort of inter-plant transfers there might be?

A. I do not know.

[fol. 1972] Q. You do not know. This morning you mentioned, and I missed this testimony—the figure 19—not only with respect to the number of reporting companies to NEMA, but also with respect to—I thought you said a number of reporting Census—?

A. That's right.

Q. Where did you get that number 19 from?

A. We got it from the staff of the Bureau of the Census.

Q. When did you get this?

A. Recently.

Q. Who was the "we" that got it from them?

A. My staff did.

Q. Who on your staff?

A. Either Mr. Hoover or Mr. Caspozak.

Q. I may have misunderstood your testimony this morning, because I was trying to find this fact out and I thought

you told me you never specifically discussed conduit. Maybe I misunderstood you.

The Court: We have spent an awful lot of time on that which was very simple. He indicated conduit form and went [fol. 1973] into great length to talk about it, and it would seem to be a hassle between the two as to whether the discussion of conduit form constituted a discussion of conduit.

Q. That's right, because this is not conduit form. This is a wiring device form and includes a number of things. In other words, you have discussed recently with the Census data with respect to conduit that appears on this form?

A. Not data. We simply wanted to know how many companies reported in the Census figures. That's what we asked.

Q. For both steel and aluminum; is that right?

A. Total.

Q. And the total was 19?

A. 19.

Q. Did you also determine how many aluminum conduit reporters there were?

A. In the Census figures, you mean?

Q. Yes, for the year 1960 as the totals appear on GX-498 for identification.

A. The information we got from Census had to do with the number of companies and the number of establishments [fol. 1974] that reported under each of their three headings, rigid conduit steel, electrical metallic tubing steel, and other EMT, and for each of these three we got the number of companies and the number of establishments. 19 was the number for the rigid conduit steel. 14 was the number for electrical metallic tubing steel, 7 was the number for other EMT.

Q. Did they give you the number of establishments engaged in the production of aluminum rigid and EMT conduit?

A. Number of establishments were 22 for the total rigid conduit steel, 16 for the electrical metallic tubing steel, and 9 for other EMT.

Mr. Melchior: Well, I am going to mark at the present time government Exhibit 500 for identification and I am

informed that we failed to mark 499 for identification—so if it would be possible for the reporter to reconstruct that—

(Government Exhibit 500 marked for identification.)

Q. Now, Mr. Nesti, I hand you GX-500 for identification and ask you if you will read into the record at the beginning [fol. 1975] of the letter. Perhaps I should check whether there is any objection before you do that.

What does GX-500 for identification purport to be, Mr. Nesti, if you can tell?

A. Is this it?

Q. Yes, this is it.

A. Air mail special delivery letter to you from Richard M. Scammon, director, Bureau of the Census.

The Court: Dated what?

The Witness: February 13th, 1962.

Mr. Melchior: I offer at this time GX-500 for identification, if you will permit the government to offer it on the defendant's case.

Mr. Bergson: No objection.

The Court: Received.

(Government's Exhibit 500 for identification received in evidence.)

Q. Would you read into the record the contents of that letter, if you will, Mr. Nesti?

The Court: Do you want him to read the whole letter? [fol. 1976] Mr. Melchior: I would like to, because I would like to ask him to comment on it.

The Court: All right.

A. (Reading) "This is in further reference to your telephone conversations of February 9 and 12 with Mr. Owen C. Gretton, assistant chief of our industry division, regarding figures on electric conduit and conduit fittings as reported in our Current Industrial Reports Series M36K for 1960.

"In response to your request, the attached table presents the number of companies and the number of establishments reporting 1960 data for Codes 3644221, 3644222, 3644223

and 3644224 (steel and other metallic electric conduit, both rigid and electrical metallic tubing). Within these codes no non-metallic conduit is included, and the 'other' categories include all metal conduit (other than steel). Under Census law we are not permitted to give you the names of the companies reporting to us on any of our surveys.

"The companies and establishments included on the attached table cover the revised quantity and value of shipments of these codes as submitted in my letter of February [fol. 1977] 1 to Mr. Lee Loevinger. The revisions came about as the result of our further review in these areas, which brought out the fact that some new companies had entered these fields but were not previously canvassed. The coverage of the items now reflects any new companies in this field as reported to the Bureau of Old Age and Survivors Insurance, which is the major mailing list source for the Census Bureau's surveys, as well as existing companies entering the conduit field as shown in the Annual Survey of Manufacturers Reports.

"This survey was conducted under authority of an act of Congress (13 USC) which required respondents to submit a report. The figures, as revised, represent reports received from all known producers of the items covered. We are satisfied with the results of the survey and are convinced of the reliability of the figures we have published as revised in the Bureau's letter of February 1.

"As to whether some duplication may exist in our published figures due to resales, the original mailing list for this survey was made up of those manufacturers who in [fol. 1978] the 1958 Census of Manufacturers reported actual shipments of these products. In the 1958 Census a separate line for resales was provided, and those manufacturers who simply reported resales of these items were not canvassed. In addition, the following instruction appears on Census Report Form MA-36K: "Do not include the quantity and value of complete wiring devices received from other manufacturing establishments which are re-packaged for resale by you."

"If we may be of any further service, please contact us again. Sincerely yours."

The table?

Q. Maybe you can testify that there is a table attached. It is not necessary to read that.

A. There is a table attached showing the number of companies and number of establishments.

Mr. Melehior: Thank you. No further questions.

Redirect examination.

By Mr. Bergson:

Q. Mr. Nesti, does the fact that on October 19th, 1961 the [fol. 1979] Census issued Current Industrial Report 1960 for wiring devices and supplies with figures specified thereon and were subsequently amended by the Census by letter dated February 1, 1962 increasing quantities mentioned in the current industrial report indicate to you that there might have been any infirmities in the original report?

A. Well, they certainly do indicate that, but your Honor, may I clarify this Census relationship?

The Court: I guess you better. You have got me so balled up—

A. (Continuing) I am afraid the questions and the answers I was asked to give might cast a reflection on the Census Bureau and its work. This job of measuring business in any area is a tough job and we have worked cooperatively with the Bureau of the Census since way back, trying to improve these measures so that they can be accepted as reasonable benchmarks. To the extent that we have been able to devote time to this project through the years, and the more years that we have been able to devote to it and the more figures that are released that are questionable, the more headway we have been able to make. Unfortunately, in this particular area—and this is no reflection on the Bureau—but in that area we feel we have not had time to tackle problems that surround the proper reporting and compilation of census figures, so I am not surprised that since the release of what is supposed to be a final summary, a subsequent review has brought a further revision. This has happened before. As a matter of fact, I wouldn't be a bit surprised if we pinned the Bureau down further, there would still be another revision

following the one you received. If you read the notes, especially in this particular compilation wire supply field, you will find 18 notes at the bottom of the table, all of which indicate some of the problems involved.

For example, on one, other wiring devices, they have a note saying that 60 percent of this figure included precious metal. We all know these are not wiring devices. The Census had to put that note in there subsequent to a restudy.

Q. Mr. Nesti, I invite your attention to government exhibit [fol. 1981] 498 for identification.

Mr. Bergson: I don't think you offered this, did you?

Mr. Melchior: No, I didn't.

Q. I ask you where on that form you find a request for the reporting of aluminum rigid conduit.

A. You mean specifically?

Q. Yes.

A. There is no specific request for it.

Q. Is aluminum rigid conduit reported under rigid conduit?

A. The intent, I am sure, was that it should be reported there.

Q. Well, what does footnote 5—

A. Well, note 5 that is being referred to, your Honor, reads "In 1960 data for other rigid conduit is included with other electrical metallic tubing," but that is only a matter of summarization. Apparently for some reason the Census was not able to set that figure out separately.

Q. Do you recall whether in the reporting form they asked for a specific—they had a specific item for aluminum rigid conduit?

A. No, this is one of the differentials between our [fol. 1982] instructions and the Census item. In our instructions we specifically ask for aluminum. In the Census they use terminology "other." As I say, I'm sure the intention was to cover aluminum there, but it doesn't specifically call for it.

[fol. 1983] Mr. Bergson: It is not clear as it might be.

Q. Now, let me ask you this one final question. You were at GX-500. You read it into the record.

A. Yes.

Q. This was a letter from the Bureau of Census to Mr. Melchior, dated February 13, 1962. After having read that letter, is there anything in that letter which causes you to change the opinion that you expressed this morning regarding the statement of the accuracy of the Census figures?

A. No, there is not.

Q. Is there anything in that statement that convinces you that the Census figures were not as you stated this morning, "understated"?

A. No.

Mr. Bergson: No further questions.

The Court: Just before the witness goes—go ahead, Mr. Melchior.

Mr. Melchior: I just want to ask one thing. I think the witness explained very adequately the difficulties involved in any collection agency in coming up with statistics 100 per cent accurate.

[fol. 1984] Recross-examination.

By Mr. Melchior:

Q. Over the last 20 years it has been your experience, Mr. Nesti, when gathering statistics that are national in scope, quite often you find that the figures are not necessarily right. If you ran the survey again, you would come up with something different.

A. It could be.

Q. I think that was the import. And that the newer the industry is the more difficult it is to get adequate precise national statistics?

A. I agree with that.

COLLOQUY BETWEEN COURT AND COUNSEL

The Court: I would like to clarify in my own mind this witness' testimony, therefore, I am going to ask him to stay here for just a moment.

Now, Mr. Bergson, this witness, I take it, was called among other reasons to show that the Universe figures in some of the Government's charts lack accuracy.

Mr. Bergson: Are unreliable and understated.

Q. Now, I think you stated that 455, that is the chart, here, it is headed "Value of shipments of conduit in the United States," and its source is apparently taken from the [fol. 1985] Census report, if I understand it right.

Mr. Bergson: As amended by that letter, Government's Exhibit 496, I think it is.

The Court: This last one is GX-520.

Mr. Bergson: But the handwritten figures on that chart came from Government's Exhibit 496.

The Court: 496. That is the February 1st—

Mr. Bergson: The February 1st letter.

The Court: Now, all right. What is bothering me just a little bit is that some of these charts are based on Nema figures and some are based on Census figures.

Mr. Bergson: That's right. And what we are trying to prove through this witness, your Honor, is that neither the Census or Nema figures accurately portray the whole industry. Nema reports only as far as the reporting companies are concerned and there were several companies that did not report to Nema. And the Census, by his extrapolation is too small.

The Court: Of course, if that is true, then the percent- [fol. 1986] ages in most of these charts, what they are offered for, is to show the percentage of Rome and Alcoa in the particular product that is described in the chart. If that is true, then those percentages are wrong.

Mr. Bergson: That's right. They are too high.

Mr. Melchior: Well, on that I better make comment there.

The Court: Yes, I wish you would. Go ahead.

Mr. Melchior: Our purpose, originally, your Honor, was to offer merely Census statistics. We have all of our conduit figures based entirely on Census figures. At a very late date we came upon Nema statistics. There seem to be a great deal of similarity between the percentages in Nema and Census. After discussions with counsel we concluded that Nema statistics were probably closer and since they were so close and because this was such a new industry, we felt that we would offer Nema statistics also. Now, we find from defense counsel and from the witness from Nema that [fol. 1987] they apparently do not feel their statistics are complete.

Now, by testimony of the witnesses we have shown why they are not complete, that there are certain errors which would downgrade the Nema statistics. We still feel, however, that the Census figures are accurate figures, accurate and precise, as the situation warrants. We feel it is entirely possible that if Census did make another survey, they may come out with some slight divisions. But the percentage of the change we don't feel would be material. We feel percentages here are sufficient to indicate the relative position of Rome and Alcoa in this field as a whole.

As you will note, we don't have figures for other companies as we do in the case of wire and cable. It was easy to collect figures for wire and cable, although the difficulties inherent in that are apparent from the footnotes we had to use. In the field of conduit, we didn't try it. We gave the most reputable universe that we could find, which was Census, and Rome and Alcoa figures are based on that.

[fol: 1988] The Court: It seems, and here is the way I am thinking and trying to get something out of this witness' testimony, it seems rather obvious to me that Nema's figures do not include the whole industry.

Mr. Melchior: They certainly don't.

The Court: Now, if Nema's figures don't include the whole industry, and your figures are substantially the same—

Mr. Melchior: They are not. There is a difference. Three million dollars.

The Court: And your figures are substantially the same, then doesn't the same defect carry over into the Census figures?

Mr. Melchior: I don't think so, your Honor, because we have demonstrated where the Nema figures are in error. The Nema figures are presently lower than the Census figures particularly in the field of aluminum. In the field of aluminum conduit. We have demonstrated through the testimony of the witnesses that Nema's figures are in error by including resellers.

The Court: So are your figures in error.

[fol. 1989] Mr. Melchior: There is no evidence in the record that they are in any way, and we have this letter from Census—

The Court: Just a minute. You take all the time in the world. I think slowly. What about the proposition, for instance, of interplant transfers. Your charts are headed, I think, "Value of shipments in this country." Now, if I understand the witness right, the Census figures would include foreign shipments.

Mr. Melchior: That's right. There are two different ways of collecting it. Census collected it one way and Nema collected it another way.

The Court: That is not what I am talking about. You say there were errors in the Nema figures because they didn't all report. But there are also obvious errors in the Census, because they apparently include foreign shipments, for instance, and interplant transfers. So that would be erroneous, too.

Mr. Melchior: Except we don't think they are errors. Merely because the Census decides to include interplant [fol. 1990] transfers doesn't make the figure wrong.

The Court: No, but it makes your caption wrong, doesn't it? Because you were talking about in your chart the sales or shipments, I don't know how it went, how each one is separately designated, but the shipments in the United States.

Mr. Bergson: Your Honor, I think maybe I can throw a little light on this.

The Court: All right. You help me.

Mr. Bergson: If Nema included foreign sales and interplant shipments in its figures even of the reporting companies, those figures would be higher and be closer to the Census. Or might even surpass the Census. But even under those circumstances Nema says our figures are incomplete because we don't have all the reporting companies. Now, the purpose of this testimony has been to show that by comparing Nema's way of reporting with the Census way of reporting, and if you would add to Nema the interplant transfers and would add to Nema the foreign shipments, Nema's total would be higher and still there would be a [fol. 1991] percentage above that that was unreported. And this casts reflection on the Census figures. They show the import, the purport, and the purpose of this testimony.

The Court: That is what I am getting at, but I am having difficulty. If we start out with the concession that Nema is

too low because they don't include these things and Nema is only slightly lower than the Census, and the Census includes some items Nema doesn't have, it seems that the taint spreads over onto Census, also.

Mr. Melchior: I think we have shown by testimony with respect to the Nema totals, and let's direct our attention to just aluminum conduit.

The Court: Now, what charts are these?

Mr. Melchior: Well, you can look at, I direct your attention to Government's Exhibit 458, which purports to show—

The Court: It is headed "Value of shipments of aluminum conduit."

Mr. Melchior: Just aluminum.

[fol. 1992] The Court: That means as far as any shipments in the United States.

Mr. Melchior: That would include shipments in the United States plus whatever else there was included in, and the Census quotation which happened to be interplant transfers also includes exports. But, in addition, your Honor, and let me show you another problem here, it also includes accessories. In other words, the industry figure for aluminum conduit as secured from Census, the sixteen million dollar figure there, also includes accessories.

Now, we have no way of getting accessories out of there, so we are willing to leave the figures stand including accessories, knowing that it is an inflexible figure. This is the best we can get. Now, we have measured this figure against Rome and Alcoa figures which include only conduit. So if, somehow, we could get out of the sixteen million dollar figure, the accessories, the percentages there would be larger. We admit that this is not a precise figure. We submit, however, that it should be lower. We have no way of knowing how much lower it is.

[fol. 1993] Mr. Bergson: But it might be larger if all companies were included.

Mr. Melchior: We submit all companies are included. We have this letter from Census dated February 13, that they have recently canvassed the situation, and as the witness testified they talked to other associations, collection agencies and people in the field, and they feel that they have

every company. The witness doesn't know which they have. He has no way of knowing because it would be in violation of law if Census made that information available.

Mr. Bergson: Census said they canvassed the old age pension list and some manufacturers association. There is nothing in the Census letter as I read it that indicates that we have every company in here.

Mr. Melchior: I submit that is what they are saying, and I think the fact that they put this report out is obvious that they think it is a complete total. There is no evidence in the record that they are wrong, and this figure stands.

[fol. 1994] Mr. Bergson: What do you think the witness has been testifying to?

Mr. Melchior: He is giving his opinion that he doesn't think that they have everybody. But there is not a shred of evidence that they have not.

The Court: Well, that is about all we can do, I suppose. I suppose all we can do is take the opinion of these people who know and it strikes me as being, well it follows, that if Nema's figures are too low, because of failure of companies to report, that there is nothing much that bolsters the Census figures as containing something that the Nema figures do not contain.

Mr. Melchior: The Census figures, your Honor, as also seven million dollars higher than the Nema figures.

The Court: Well, it might be in some places and in some other places I don't think they are. That is in a quick glance.

Mr. Melchior: Well, in the aluminum field they are.
[fol. 1995] Mr. Bergson: Your Honor, if you will recall this witness testified that seven aluminum companies reported to Nema.

The Court: Yes.

Mr. Bergson: This letter from the Bureau of the Census said also that seven companies reported to the Bureau of Census. The witness also testified that there were several companies that did not report to Nema who were in the manufacture of this. Now, obviously, if only seven companies reported to Nema and only seven companies reported to the Census, and there were several companies that didn't report to either, the Census figure must be incom-

plete. I don't see how you can escape it. And the Government has introduced these charts solely for the purpose, if you will recall, of trying to bolster up their Census charts. And what they are doing here is taking a chart that is admittedly incomplete, or a series of charts that are admittedly incomplete, and trying to use them to bolster up the validity, of which we have questioned.

Mr. Melchior: I would like to mention two points that [fol. 1996] Mr. Bergson just made. He said there is a similarity in that both Census and Nema had seven reporting companies in the aluminum field. This is true. But we have the letter from Census which indicated that there were seven reporting companies which do not include re-sellers. They are all producers or fabricators. Whereas this witness testified that of the seven companies that reported to him, to his organization, two of them are re-sellers. So he only has five fabricators reporting. So there is no way of knowing which are the others.

The Court: Now, what is the chart that would show what you are talking about now. When I look at these charts I get awfully confused. They show the sale of steel and aluminum conduit, rigid and EMT in the United States. Then the next thing we get is that they include foreign shipments. I don't know, maybe the heading of your chart may be wrong. I just don't quite understand it, I will admit. [fol. 1997] Mr. Melchior: Sometimes we had some reservations on that ourselves, your Honor.

Mr. Bergson: Then why don't you withdraw them?

Mr. Melchior: But there is no way for us to find out how much was exported so we can get the export figures out.

The Court: Then you should not label your charts as being limited to the United States.

Mr. Melchior: For instance, looking at GX-458.

The Court: I happen to be looking at 457 and that shows that exactly, "in the United States."

Mr. Melchior: I think that's right, because that happens to be first with respect to Alcoa and Rome, this information was given to us in that form by the Defendants. Then with respect to the Nema, it is the next figures on Nema. The witness has testified that he doesn't collect export information. Now, if we would turn to page, to Exhibit 458, GX-458, which is Value of shipment for aluminum conduit, we do

[fol. 1998] not say they are just to the United States, because we realize that these are based on Census figures, and that Census does include exports. But we do not know how much. We have no way of getting it out. But in any case, your Honor, if we could get the exports out, the percentage for the two individual companies would increase instead of decrease.

Now, if we turn to the next page, GX-459, this again has to do with aluminum conduit. And if you will notice there we entitled it "United States," and the reason is that here we have Alcoa and Rome figures which are given to us in that fashion, and we have the Nema figures which are collected in that fashion. So, as far as aluminum conduit is concerned, these two charts are the two key ones, GX-458 and GX-459. GX-458 gives the percentage based on Census which comes to about 26.5 per cent.

The Court: All right. Let's quit right there. That obviously is incorrect, isn't it?

[fol. 1999] Mr. Melchior: You mean because of—

The Court: Because of the failure of the accuracy of the industry total.

Mr. Melchior: No, sir, I don't think I can perceive that, your Honor. There is no evidence in the record that it is incorrect. We have the letter from the Census which says there—

The Court: You are not using the Census. We just discussed—

Mr. Melchior: This one is Census.

Mr. Bergson: I don't see how counsel can say there is no evidence in the record when we spent the morning—

The Court: Oh, it is in the record, definitely.

Mr. Melchior: The witness doesn't know, your Honor.

The Court: The witness knows that his companies, the NEMA reports do not contain the whole story. Now, then, he goes on of course and says that in his opinion the Census does not—and he uses several reasons for it. It seems to me [fol. 2000] that is true. Well, now, none of these charts that are in here that are based on NEMA are any good.

Mr. Melchior: Your Honor, I find it very difficult to argue these are effective totals when the witness and the collector says they are no good. I admit that. I think the materiality and the weight of the NEMA totals is very small; I will

concede that; but I will not make any such concession on the Census figures.

Mr. Bergson: Why don't we move to strike the NEMA charts.

The Court: No, I will look at them. Because it seems to me that if the NEMA is no good, if I understood all of this evidence this morning, and I'll admit I didn't understand some of it, it is spread over into the other. All right.

The Witness: Your Honor, may I—

The Court: Yes.

The Witness: Just because of your last words, I wouldn't be a twenty-eight-year service man at NEMA if I walked out of here and let your last words of "no good"—I think [fol. 2001] I'm sure what you meant as an overall industry total, the NEMA figure is not that figure.

The Court: What we are doing here, you see, if I understand right, we are getting down to pretty small percentages, so the accuracy may become rather important and I didn't mean that. The fact that I said we'd throw them all out the window. What I should have said was they weren't complete.

The Witness: Thank you, your Honor.

The Court: All right.

FRANK L. MAGEE, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination.

By Mr. Bergson:

Q. Mr. Magee, will you please state your name and address?

A. Frank L. Magee, 30 South Linden Avenue, Pittsburgh, Pennsylvania.

[fol. 2002] Q. By whom are you employed?

A. Aluminum Company of America.

Q. In what capacity?

A. Chairman of the board.

Q. Are you the chief executive officer?

A. I am.

Q. How long have you been chairman of the board?

A. Second year.

Q. Prior to that what position did you hold?

A. President.

Q. For how long were you president of the Aluminum Company?

A. I believe since 1957.

Q. And prior to your becoming president, what position did you hold?

A. Executive vice president.

Q. For how long were you executive vice president?

A. I think it was about five years.

Q. When first did you become employed by Aluminum Company of America?

A. 1917.

Q. Have you worked for Alcoa continuously since that [fol. 2003] time?

A. Ever since.

Q. During the course of your employment did you have anything to do with the sale of aluminum wire and cable?

A. Yes, quite a bit.

Q. Now, Mr. Magee, how many primary producers of aluminum are there in the United States?

A. Today there are six actual producers.

Q. Do you know whether or not there are any companies planning to enter the production of aluminum?

A. One has officially announced its intention—Consolidated Aluminum Company. There are about four that have been reported in the press at various times of investigating the production of aluminum, and we have quite reliable reports that they are definitely looking into it. Some of them have options on property, and one thing or another.

(Defendant's Exhibit AR-75 marked for identification.)

Q. I show you document that has been marked defendant's Exhibit AR-75 for identification, and ask you to describe that document.

[fol. 2004] A. This is a report by the Bureau of Mines of the United States Department of the Interior. It is the preliminary annual report on aluminum and bauxite in 1961.

Q. When was it promulgated, do you know?

A. It was issued—is there no date on that? I see no date, do you? Oh, yes. December 19, 1961.

OFFERS IN EVIDENCE

Mr. Bergson: I offer defendant's Exhibit AR-75 for identification.

Mr. Melchior: No objection.

The Court: Received.

(Defendant's Exhibit AR-75 for identification received in evidence.)

Q. Directing your attention to the second paragraph of that document AR-75, would you please read into the record what is stated therein.

A. The second paragraph reads as follows: "Rated annual aluminum production capacity of United States plants increased 55,000 tons during the year to 2,483,750 tons when Harvey Aluminum, Incorporated announced the completion of 60 new electrolytic cells at its reduction plant at The Dalles, Oregon. A further increase in domestic aluminum [fol. 2005] production capacity was forecast. Cerro Corporation was considering building a production plant along the Columbia River at Wauna, Oregon. Cerro, as a result of its acquisition of the United Pacific Aluminum Corp. had a contract with Bonneville Power Administration to receive 90,000 kilowatts of electrical power for the plant, with delivery to start September 1, 1963. This amount of power would permit operation of a plant rated at about 55,000 ton capacity. Consolidated Aluminum Corp. acknowledged that a 27 million basic aluminum plant would be built near New Johnsonville, Tennessee. Howe Sound Company was considering three sites for a new 45 million dollar aluminum plant. Harvey also announced possible construction of a new 75,000 ton plant in the Pacific Northwest."

Q. Now, from the period between 1950 and 1960, what has happened to Alcoa's position as a producer and seller of aluminum?

A. Starting in 1950, the production of aluminum by Alcoa as a percentage of the total capacity produced in this coun-

try, has gradually decreased. I forget the percentage in 1950; I think it is in the 30's.

[fol. 2006] Q. Here is defendant's Exhibit AR-7, and I ask you whether that helps refresh your recollection as to Alcoa's position?

A. Yes, as a percent of the supply we decreased from 46 percent in 1948 to 34 percent in 1960. Based on actual production, which is a more logical figure, perhaps, to look at, production of the United States and Canada combined—the drop between those two periods, 49 percent to 36 percent. Capacity, of course, is another figure which is not quite as meaningful to us as production, but it is in the exhibit here. 43 to 35.

Q. Talking about capacity, does Alcoa have any plans presently to enter construction?

A. Not in the United States, no. No plants at the present time actually under construction.

Q. Do you have plans for construction of additional capacity?

A. In the United States?

Q. Yes.

A. No, no specific plans at the present time for construction of a new plant in the United States.

Q. Do you have any plans, or have you had any plans over the last several years, for a possible increase in the [fol. 2007] capacity of existing plants?

A. Oh, yes, we always have. We are always planning ahead, of course, to try to forecast the future and make tentative plans, but the only specific program that was developed in recent years was the new plant at Warrick, Indiana, Southern Indiana, which was completed only to the extent of one pot line, and then construction ceased at that time when we ran into the so-called depression.

Q. You say "depression." You mean over-supply of aluminum, do you?

A. Depression in the aluminum industry, or over-supply.

Q. How long has that condition of over-supply existed?

A. Well, I can almost pinpoint it to July 1st, 1956, when the first real evidence of the over-supply began to be felt.

Q. Now, Mr. Magee, do you encounter in your sale of primary aluminum in the United States the competition of any foreign companies?

A. Yes, quite substantial. Very worrisome.

Q. Could you name some of those countries?

A. Yes, the major country shipping into the United [fol. 2008] States, of course, by far the biggest is the Canadian company—I should say the Canadian companies. I know the Norwegian producers and the French producers—largely those.

Q. Now, at the present time how would you characterize the aluminum supply situation?

A. More than ample to supply the demand.

Q. And do you expect any shortage in the foreseeable future?

A. I do not, and I think it is quite obvious that it would be very difficult, save a war, and even another war of the type we would expect to obtain, would not in itself in our humble opinion today forecast a shortage of aluminum.

Q. Now, in the unlikely event that the aluminum supply and demand picture should become more closely in balance, are there any steps that could be taken to expand the supply of aluminum?

A. Comparatively simple steps. We have, of course, our own plant and our own ideas about it. We believe very firmly that we must keep the supply ahead of the demand. I'm sure that has been well stated in the press by others in the industry, that we could well expect they would also [fol. 2009] attempt to move in the additional capacity very promptly as the demand increases.

Q. Are plant sites available?

A. Yes, as a matter of fact, the Warrick plant I mentioned was planned to be a very sizable plant. We started out to build five pot lines, as we term them in the industry. These are very large lines nowadays, these modern plants. They are in the area of about let's say 50 to 60 million pounds, 25,000 to 30,000 tons. We have all of the electrical power facilities in that particular plant. The fuel facilities, coal, everything else set up to complete the five lines. We only completed the one line. We have additional pot lines at all of the other plants except Massena, New York at the present time, which could be reactivated very quickly, and we could easily expand some of our other plants, adding pot lines here and there. Almost every plant we could modernize and increase its capacity. We have fuel supplies on

the Ohio and Mississippi River system so that we could increase our capacity.

Q. Are there adequate supplies of bauxite available?

[fol. 2010] A. Yes. The supply of bauxite today, as is the case with iron ore, perhaps—most people know about that, but in the case of bauxite the discoveries have been very, very substantial since the end of World War II. I would say that the supplies of bauxite today are so far beyond anybody's concept prior to World War II that it is—bauxite now is a very, very substantial commodity as far as availability all over the world is concerned, particularly in the Western Hemisphere I might add.

Q. Now, you have talked about Alcoa's potentialities of expansion. Do your competitors have potentialities of expansion, if you know?

A. Well, I do happen to know. I know of one company, for example—is it all right to mention them by name?

Q. Sure.

A. It is public knowledge that Olin has an arrangement for supply of alumina and they never did get to the point as a result of the over-supply situation of building their large second aluminum plant in this country. This has been—the fact that they were unable to do this—we know that [fol. 2011] our larger competitors almost without exception—I would say without exception—have plans for increasing capacity. This has all been indicated in the public press.

Q. And if the demand should warrant it, this capacity could come into being?

A. They all seem to be pretty healthy, these competitors of ours, and I am sure they could easily move ahead.

The Court: Is the Reynolds plant open at Massena?

The Witness: Yes, it is running.

The Court: Is it producing?

The Witness: Yes, it is producing.

The Court: When was it opened for production, do you know?

The Witness: It seems to me it is now three years. I'd like to have that verified. It's close to that. Time basis—I have a little trouble.

Q. If the demand required it, would it be Alcoa's policy to increase capacity to meet that demand?

A. I'm sure it would. We live for the day.

[fol. 2012] Q. Would an increase in demand for aluminum be likely to encourage any new producers to come into the business?

A. Yes, I would say very definitely. As a matter of fact, as I mentioned before, there are a number considering it right now and I think the increased demand would stimulate that activity.

Q. Now, Mr. Magee, you have been talking from the period July, 1956 to date—I think you said that.

A. Largely, that is.

Q. Now, periods of government allocation apart—periods of controls apart—have there been any periods when aluminum was in short supply?

A. Yes, this has been a difficult situation, but I would like to make clear that—of course, the government allocation period is automatic—the government takes over the supply and allocates it. But periods of short supply in my knowledge have been largely as the result of either wartime situations—in other words, the period of short supply, the first period we experienced I suppose—I cannot speak of the period back in World War I very well—it was in short supply and allocations at that time, but coming into recent periods, the first period of short supply was in 1937, and then there was a short recession in 1938, then short supply again in 1939. But both 1937 and 1939 short supply periods were stimulated largely by the demand for aluminum as a result of the preparation for war. And this went on until we had government controls in World War II. We had exactly the same thing prior to Korea and coming out of each war period we had the stimulation that resulted from the pent up demand which caused the shortages, post-war in each of these, if you want to call Korea "war." Also in 1937 the shortage was somewhat stimulated by a pent up demand as a result of the famous depression, I might add, added to the increased demand for airplanes under the lend-lease programs which got under way.

Q. In these—

A. I wanted to make clear that the periods of shortage—this is what I am trying to make clear—that under normal conditions the law of supply and demand, short of military

problems, short of national problems stimulated by war effort, there hasn't really in my humble opinion ever been [fol. 2014] any real shortage. The aluminum industry kept ahead of the demand, except in those cases where extraordinary conditions arose of that type.

Q. Well, now, in these extraordinary periods were there any periods when government controls were not in effect?

A. Yes.

Q. Now, when government controls were not in effect and aluminum was in short supply for the reasons that you have mentioned, what was Alcoa's policy in regard to making aluminum available to non-integrated producers?

A. We attempted to do the best job we could. Many times in cooperation with the government officials as a matter of fact. Because even in those periods that we were not under controls, we always had to recognize the military—government got its first take. After that we attempted to allocate our production on the basis of a background of experience with our customers. In other words, if we didn't have enough aluminum to supply everyone, we attempted to allocate on the basis of their past experience over a term of years with us. In other words, our past shipments to these respective [fol. 2015] customers. We allocated to our own fabricating plants in exactly the same manner. On the basis of past experience.

Q. Did you favor your own fabricating division?

A. Not at all. We bent over backwards just because we wanted to be extremely careful we could never be accused of not taking care of our customers on a perfectly equitable basis.

I should mention in those particular periods, these are difficult periods, because when you get into these tight situations of course the requirements of customers many times are multiplied, so that you cannot base it on anything but past experience.

Q. And when you did that, did it become necessary for you to operate your own fabricating facilities at less than desired capacity?

A. Yes, we did that.

Q. Now, Alcoa is both a primary producer of metal and a fabricator of aluminum products?

A. Yes, sir.

Q. What is Alcoa's policy with regard to the pricing of pig and ingot to its various fabricating divisions?

[fol. 2016] A. Well, it has always been our policy to charge our fabricating facilities with the price—same price that we sell our ingot on the market. I might mention that today this product which is made by the smelting plants is commonly termed ingot.

Q. I stand corrected.

A. Just an upgraded term for what was at one time called pig. The pig came from the old terminology of pig iron. It wasn't a very fancy name.

Q. Now, in pricing your fabricated products what considerations do you take into effect?

A. Well, obviously the first one is cost. We attempt to work in the case of all our products, fabricated products, military products to base, we hope, on what we believe to be efficient production facilities. In most cases at least. We attempt to establish prices which we would propose to charge in any particular product first on the basis of cost, as indicated, and then on the basis of a proper, what we would consider to be a proper and fair return on the investment of the facilities involved in the production of that product. [fol. 2017] Of course, this is obviously and always an attempt to establish fair and equitable prices in the marketplace. We must, of course, at the same time take into account the market we are aiming at. It is possible that a proper return on a product for one market might not be possible in another market. This might be due to two potential situations. One could be the situation where the market just wouldn't stand as much of a markup on the investment as another market. If you had your own free way to establish the price. But more importantly, the condition that faces us most of the time is the competitive situation. In other words, what will the competitive situation allow the price to be? The competition situation on this could be in aluminum, it could be in steel, plastics, wood or anything.

Q. Or in the very product that you are fabricating?

A. Exactly. So in the final analysis, the price is made in the marketplace, and there ultimately comes a time when

certain markets cannot be reached, just because we are unable to compete in that market on the costs that are indicated.

[fol. 2017a] The Court: Is this a good place to stop?

(Whereupon at 3:45 p.m. a recess was taken.)

[fol. 2018] (After Recess.)

By Mr. Bergson:

Q. Mr. Magee, as we recessed you were saying that competition in aluminum products affected the price that you were ultimately able to charge for your products. Is this true in wire and cable products as well?

A. Yes, very definitely. It is a very highly competitive field at the present time.

Q. Mr. Magee, is there any competition in the wire and cable field from foreign sources?

A. Yes. We are getting some effect of it from abroad. There was a very specific large production here in New York State. In fact the New York State Power Authority had a very substantial series of lines that they built. I remember that was a bid from Belgium and we had an opportunity fortunately to meet it. As a New York State manufacturer we did meet it, but we expect there will be more of this. Of course, in just plain wires and rods and bare sheet, of course, competition is very pronounced. It would take a fairly large job for a foreign cable manufacturer to come in here, because he has the matter of shipping of reels, and [fol. 2019] the incentive to come over for small jobs is not there. But we conceive strong possibility that there will be more and more competition from abroad in the electrical conductors. Particularly the bare. I don't know enough about the insulated wire. That might also follow.

Q. Now, Mr. Magee, going back to 1950 or 1951, directing your attention to that period, what wire and cable products were being introduced by Alcoa?

A. In 1951 we were confining our production, in 1951, I am sure, primarily to bare all aluminum cable, steel reinforced conductors. As I recollect we were making no insulation, insulating conductors, of any kind in that period.

Q. Who invented ACSR?

A. Well, he happened to be——

Q. Not the individual, what company?

A. It happened to be Billy Hoopes, in our company, who invented it, in 1907.

Q. In 1951 did Alcoa have any experience or competence in the insulation of aluminum wire and cable or in wire and cable?

A. We didn't think we had, no. As a matter of fact, we had none.

[fol. 2020] Q. Did you take any steps to get into the insulated wire and cable field?

A. Well, of course, we were faced more and more with the fact that there was a potential for aluminum in the insulated field. Quite a few years ago we tried to interest the people, the copper conductor people who insulated copper conductors to insulate aluminum, and we were rather successful with one company, the United States Rubber Company, to be exact, and this was even back in the days when I was selling electrical conductors. But it was pretty difficult for these people to see any combination of aluminum in insulations. Because copper, of course, has always been pretty much standard. Ultimately, of course, United States Rubber was bought out by Kaiser, but really there was not much success in encouraging the insulated wire and cable manufacturers to move aluminum insulated wire and cable, as we were anxious to see done. Because we believed there was a future there.

Q. Did you take any steps to get into the insulating or covering of wire cable yourselves at that time?

A. Well, some time early in the 1950's, and it seems to me it was around 1952 or 3, that we——

[fol. 2021] Q. I think the records indicate it was '52.

A. '52, that we arranged to have the Rome Company toll. I believe it was both polyethylene and neoprene insulated conductors. In other words, we sent them the wire from Massena. They insulated it and then we either took it back to Massena or sent it to warehouses or had it shipped directly from Rome to our customers. In other words, it was an insulating tolling arrangement.

Q. Now, were there any other reasons other than the one that you just gave as to why Alcoa felt it ought to get into the insulating wire and cable business?

A. Yes, sir. As a matter of diversification in this industry. After all the all aluminum and aluminum cable and steel reinforced conductors had finally obtained their places in the sun in the overhead conductors of the transmission lines, which was sold largely directly to utilities. The other conductors such as the insulated and the smaller secondary conductors and of course so many of the various types of insulated wire, service drop, and so forth, a good deal of that business is handled through distributors, like Graybar, [fol. 2022] or national distributors or local distributors who handle electrical products. So there was a competitive proposition.

First of all, if we were going to supply these companies with a full line of conductors, as our competitors were doing, we had to have a bigger line of conductors than just bare. Because many times, first of all the utilities, buy on an annual basis or contractual basis and they buy the whole line. People like General Cable, who were here this morning, which take the whole line, and they go for the complete line of conductor materials, bare, copper and aluminum.

Even more, you have the distributor who distributed not just to the large utilities but to the contractors who build houses, contractors who build lines for utilities, to industrial companies. These distributors occupy a pretty important place, and they must have the whole line. And, of course, the companies who are able to supply the full line were in the preferred position with the distributor. He could hardly carry just a part of the line for us and then ignore that same part of the line for the competitor. For [fol. 2023] that reason, plus another important reason from our standpoint, as competition in the aluminum grew, as our percentage of the aluminum industry kept going downwards, we felt in our management that we had to, also we have the ups and downs of the metal business, to a great extent the gyrations of general business, that diversification was becoming an important thing for us to take into account. And here was the area where we had some reasonable hope of diversification in insulated conductors, both copper and aluminum, which would be highly desirable from our standpoint. And we spent lots of time studying that potential situation.

I should also state in that direction, Mr. Counsel, that it

is a matter of record, that because of our inroads, because of the inroads of aluminum into the high tension wires, the copper companies had gone into the aluminum and the electrical conductor, bare, business, and then it was only natural, I want to point out, that they were the ones who sat in the more healthy position, being able to produce both bare aluminum and the insulated copper.

[fol. 2024] Q. So that there came a time, then, after your tolling arrangement with Rome had been entered into where only aluminum-insulated wire and cable were tolled for you, that you felt that you had to get into a more diversified line?

A. Exactly, because there are areas obviously where copper has its place, and while I don't agree entirely with the witness this morning that aluminum cannot move a little heavier into the copper fields, the fact still remains that there are many people who will buy insulated copper conductors where we think insulated aluminum would serve as well. We also recognize there are areas where insulated copper conductors have a very definite place in the industrial picture.

Q. Now, when you came to that conclusion that you ought to diversify into a broader line, what course of conduct did you take into consideration?

A. You mean—

Q. What were the possible steps?

A. Oh. Well, of course, having studied this for a good many years, it wasn't a momentary decision, as you might imagine, but coming out of World War II, there was a great deal of attention given to this problem as to whether or not [fol. 2025] we could consider going into the manufacture of these articles ourselves. It wasn't any—well, there were lots of problems in connection with it, but we had some ideas of how we might move. But in considering the manufacture on our own, obviously we had a marketing situation; we had a manufacturing problem. Our present bare wire plants in Massena and Vancouver, which are topped by the smelting plants and the fact of consumption being taken into consideration in the industry, so we were faced with the probability that we would have to invest in some

brand new manufacturing facilities for making insulated conductor, and then, if we wanted to get the whole line, which seemed to be quite necessary, and to get into the copper insulated conductor, this would add an additional complication and cost to the problem. This meant a very substantial investment.

As far as going on our own was concerned, and the time element had become more and more pressing, and important as the competitive situation got more difficult.

The other route, of course, is quite obvious and logical, [fol. 2026] and that is the route of acquiring a company already equipped, such as Rome, already equipped with the ability, the technique and the facilities to produce these products.

Q. When you talk about ability and technique, would the problem of ability and technique be a problem that you would have faced had you gone into this on your own?

A. Very definitely. This was a new one for us. This was a new kind of thing. Insulations have changed enormously in recent years. They are changing daily from what I understand, and there are new plastics coming out all the time. New types of conductors. This would have required a new set of technical people. We would have to start from the ground up, so to speak.

Q. Would they have been easy to obtain?

A. Well, I don't know. This business of easy to obtain good people is one of the real problems of the manufacturing company these days. I wouldn't say it was easy to obtain them, no. I am sure we would have been able to do it, given time.

Q. You say given time.

A. These people don't grow on trees. [fol. 2027] How long do you think it would have taken you to get into this position in the way that you wanted to?

A. A program of the type we got with our Rome Association certainly would have taken ten years without any doubt. Now, we would have obtained a very good start on some of the conductors say in roughly five years. This is just an estimate, of course, but it would have taken a substantial period of time to get to where we are today.

Q. And during that period of time is it possible that your competitors would be moving ahead?

A. Unfortunately, I don't like to think about it, but it is always a condition that time is pressing in these days on these matters.

Q. Now, Mr. Magee, I show you a document which has been marked as Government's Exhibit 161, which is a memorandum from Mr. P. T. Coffin to W. K. Unverzagt, the first paragraph of which shows a copy of this letter as being sent to you. And I invite your attention to page 5 of that document, paragraph 7, where Mr. Coffin uses in quotation the phrase, "Industry rocking in regard to the Kaiser-[fol. 2028] U.S. Rubber deal and the Olin Mathieson-Southern Electrical Combination," and ask you if you knew, I ask you what that statement meant to you?

A. The "Industry rocking"?

Q. Yes.

A. In quotations.

Q. Yes.

A. Well, since it refers specifically to the Kaiser-U.S. Rubber deal and the Olin Mathieson-Southern Electric deal, it certainly would be interpreted to me, knowing about the general situation, that Mr. Coffin was talking specifically about the acquisition by these two companies, Kaiser and Olin, of insulating, manufacturing facilities for the production of insulating conductors. Not bare, obviously, because it wouldn't have been industry rocking if it had been bare.

Q. Would it have been industry rocking if it had been insulated aluminum conductor?

A. Oh, yes, very definitely. In other words, it is industry rocking in either case. As long as they acquired by these acquisitions they were able to move right into the aluminum [fol. 2029] and copper insulated conductor business.

Q. Which were they in at that time, aluminum and copper?

A. Aluminum and copper insulations.

The Court: What is the number of that exhibit?

Mr. Bergson: 161.

The Court: 161.

By Mr. Bergson:

Q. Now, Mr. Magee, do you recall that some time during 1957 there were some discussions with Rome Cable concerning its acquisition?

A. Yes, I do.

Q. Can you tell us what you recall regarding that?

A. The relationships with the Rome Company, of course, have been very close for many years. Many of the officials of the two companies were close friends. As a matter of fact, just by circumstance, in some ways, and it had nothing to do in many ways with the fact that they were in somewhat similar industries. But many of our people because of the close relationships, because Rome was located not too far from Massena, because we had a great respect for the organization, the people in the Rome Company, it is only [fol. 2030] logical when we were looking at these two possible keels where we might go on a diversified line of electrical conductors, that we would think of Rome. And, as a matter of fact, there was some very frank conversations between the two companies. There was never any mystery, as I understand it, about the fact that we were going down this route. As a matter of fact, it is my recollection that when we asked them to toll, fabricate the insulations on our conductors, that there were no bones made about the fact that this was a road that we might well travel some day, and in asking them to insulate for us that there would be no misunderstanding about the matter if later we went into the insulating business ourselves.

Q. Now, when you first had discussions with Rome in 1957, did you make an offer to acquire Rome Cable?

A. Yes, after some initial conversations, which usually take place in situations of that kind, there was an offer made in shares of Aluminum Company stock to the Rome management.

Q. Of what value; do you recall?

A. My recollection was that the approximation, and this may be a little ways off, that the approximate value in Aluminum Company shares based on the market of Aluminum stock at that time was in the area of twenty-four million dollars.

[fol. 2031] Q. What happened to that offer?

A. That offer was rejected.

Q. Now, after that offer was rejected did Alcoa take any other steps to acquire a company engaged in the insulating of wire and cable?

A. Well, somewhat reluctantly, I guess it was, because we had a great feeling about Rome, friendly feeling, we arranged to have a—well, we did two things as I recollect. We decided to have another survey made to see whether we were right in our decision that we should diversify our line of electrical conductors, and we asked Ebasco Services in New York, a very prominent firm of engineers, independent people of course, to give us some idea of the buying habits of utilities and asked them a great deal of information that might help us again reach a decision. Almost coincidental to that, or shortly thereafter, we also asked them, because of their knowledge of the electrical market, of the whole electrical industry, we asked them whether or not there were not some companies that might be considered in the category of those we could acquire with the specification again that we were interested only in companies which had [fol. 2032] qualification of producing these rather highly technical insulated conductors.

Q. And did Ebasco make this study for you?

A. Yes, they did, and they completed the study and it was helpful. It didn't change our opinion. We then asked them to make some discreet inquiries about the possibility of some of the companies mentioned, as to their potential acquisition.

Q. And what was the result of those discreet inquiries?

A. The result was zero. No soap. No business.

Q. After it looked as though Ebasco was coming to the end of the line, did you again re-evaluate your situation as to what you should do about getting into the diversified line of electrical conductor products?

A. Yes, I suppose a company like ours should be able to make up its mind, but this was an important step and involved substantial sums of money; it involved reorientation of our whole commercial organization; our distributing organization; markets that would have to be developed; and so we asked—as a matter of fact, I personally reached the point where I was very impatient about this, and I be-

[fol. 2033] lieve by that time somebody made me president and I had some responsibility along this line, so I kept hammering away, trying to get some real picture of what was involved for us to go our own route. This was very important and very difficult, of course, to ask any organization to draw a complete picture of it.

Q. I show you government exhibit 168, which is a letter dated October 3rd, 1958, from you to Mr. Davies, and I ask you if that document describes the events you were just talking about?

A. Yes, I guess it does; it obviously indicates my impatience and that of my good associate Ralph Davies as well, I take it.

Q. Now, would you explain what you had in mind when you wrote that letter?

A. Well, I definitely felt that we had reached the end of our rope as far as acquisition of a company which had the technique and the organization that we needed, so that it did seem that we should have an alternative program of going on our own, and the cost of it—what our people had proposed to do a good job—and as you notice here—I should state this letter indicates that I was referring to a rounded [fol. 2034] out program well beyond the neoprene stage and a program which would keep us in what I termed here “the number one spot in the aluminum conductor field, and if necessary a sufficient factor in the copper field to help us maintain the number one position in the aluminum field.” By the aluminum field, of course, I meant the bare aluminum conductor field, which is primarily what we were in at that time.

Q. And also did this not refer to the possibility of using this study as a check to determine whether or not you would be paying a fair price if you should find a company to acquire?

A. Yes, obviously we had this 24 million dollar offer. We had some observation of what it might take to buy some other companies, and it was quite necessary and desirable that we have some idea of what it would cost us.

Q. Now, after that memorandum was written, were negotiations with Rome resumed?

A. Yes, I believe—I don't know whether the study that I asked for in this memorandum had been completed or

whether it was just in the course of preparation, but in that [fol. 2035] period of time—this is October 3rd, 1958—it seemed again because of our past good relationships with Rome, and again our real high regard for them and their organization, and also because of the close relationship we had and their understanding of what our program was going to be, that certainly they should not be surprised if we went ahead on our own, and certainly we had the obligation, it seemed to us, of at least going once more and saying have you changed your mind or are you where you were a couple of years previous, so we approached them again on their possible interest in joining up with Alcoa.

Q. Now, at that time did Rome make an offer to Alcoa?

A. My recollection is that it was proposed since we had made the last offer that Rome should make us an offer, and they agreed to do this and they did make us an offer after consideration again of their board and various officers in Rome.

Q. And was that offer acceptable to Alcoa?

A. As I recollect, no: This was getting to be, I suppose you would call it the horse trading stage, and my recollection [fol. 2036] was that their price was higher than we were willing to pay. It seems to me it was four shares of Alcoa for five of Rome, something in that nature. Four to five, yes, as I recollect it.

Q. And did Alcoa reject that offer?

A. We rejected that offer and made a counter offer, and as I recollect again that was three to five.

Q. And was that offer accepted?

A. It was accepted subject to certain qualifications which Messrs. Dyett and Fraser and the whole board of Rome made, and the major qualification was—had to do with the question of how we would operate from Rome. This was as important apparently to them—it was important to us too—almost as important as what we were willing to pay for Rome. Quite understandable, I might say, because the Rome Company had been put together and developed from scratch by this group of men, Mr. Dyett, Mr. Fraser and others who started this company, built the personnel and had achieved quite a substantial success in this electrical conductor field, and they were very proud of what they had accomplished. [fol. 2037] and proud of their organization

Q. Are the topics that were discussed as far as Rome's desires for the continued operation of Rome was concerned embodied in this letter of yours to Mr. Fraser dated January 21st, 1959, which is government exhibit 6?

A. Yes, those are the conditions to which I was previously referring. We set them down in this form so that Mr. Fraser could take them back to his board as a finite part of the negotiations. As an understanding between the two companies. This was just as important as the exchange of stock. I mean, it was just as firm you might say.

Q. What does paragraph number 1 say?

A. "All manufacturing and selling activities of Rome Cable Company conducted at Rome, New York will be continued in that location."

Q. What does paragraph three say?

A. "We would expect to consolidate in the new company all electrical wire cable and conduit activities of both Rome and Alcoa. This will greatly expand the scope of activity and consequently the responsibility and opportunity of the Rome organization. For example, the transfer to it of [fol. 2038] Alcoa's bare conductor business alone will greatly enlarge its operation. We would expect to move into the new company additional products in the electrical conductor field or related areas as we gain experience in working together. Insofar as products new to Rome are moved into its orbit, it will probably be advisable to transfer experienced Alcoa personnel to the Rome operation."

Q. What does paragraph five say?

A. "We would expect the new company to continue the present sales organization of Rome, subject only to such modification as experience might indicate to be in the common interest. Insofar as Rome selling activity is expanded by merchandising Alcoa products experienced Alcoa personnel will be available for transfer to the Rome company. We regard the effective consolidation of the marketing organization of the two companies as one of our major problems if we are to gain the full benefit of our proposed agreement. However, we are certain that this can be achieved, as our Pittsburgh discussions indicated."

[fol. 2039] Q. Now, have those policies, as enumerated in that letter of January 21, 1959 been put into operation?

A. We believe they have. We have tried very sincerely to see that that has been done.

Q. And is it your expectation that it will continue that way?

A. We have no reason to change. We have put the responsibility for this operations on their own management and they have accepted it and as far as I can understand this is a very effective way of working together, we have found.

Q. Now, referring back to the memorandum or the letter, government Exhibit 168, of October 3, 1958, did Alcoa ever reach a point where a management decision had been made to go it alone?

A. No, we never reached this decision.

Q. Do you have any idea as to the magnitude of the undertaking that would be involved if Alcoa had decided to go it alone?

A. Yes, and then this was confirmed by this study which I asked for. Quite—some pretty fairly large figures as to what it really meant to us to move out on our own.

Q. Would it have been fairly substantial?

A. Yes, it would have been. It would have been substantial. [fol. 2040] And we are rather use to spending some sizable sums of money.

Q. Mr. Magee, are you familiar with the acquisition by Alcoa of the transformer division of Automations Instruments Company?

A. Yes, I am.

Q. Would you—do you recall when that acquisition took place?

A. I can't get it very clearly—I would have to guess at around 1956 or '57, but I am only guessing. It may have been before that.

Q. Do you recall what Alcoa paid for the Transformer Division of Automation Instruments, Incorporated?

A. It was something less than a hundred thousand dollars; ninety thousand sticks in my mind, or thereabouts.

Q. Do you recall what Alcoa acquired when it acquired the Transformer Division of Automation Instruments, Inc.

A. Yes, it was almost completely technique. This was a very interesting individual by the name of Shafer, who had an idea which we thought was quite unique, and it involved

a potential new use for aluminum, or a potential use that [fol. 2041] was not—we hope to develop it some time, which was simply in the embryonic stage. That had to do with the potential of aluminum transformers and other electrical equipment, windings and these fellows in Denver, this division had done quite a lot of work on it, but really didn't have the capital or the equipment to get anywhere with it, and our attention had been called to it—they approached us because of our interest in aluminum—they saw the possibilities, and after considerable investigation of this potential, it was obvious they wanted to sell out and as a matter of fact, we bought a lot of their home-made equipment; it was largely—they had developed themselves, which we had to rebuild, of course, into more modern equipment or up-to-date facilities. But it was more of a research project than it was—it wasn't a production facility at all, as a matter of fact, it was research development on the part of this man Shafer, who, by the way, came with us; a very good research man. I believe right now—you see this was almost preliminary to the idea of the magnet wire business. This was windings. And, well, magnet wire is an important product [fol. 2042] if we could get aluminum and transformers, windings, and large electrical machinery windings as a replacement for copper, this is a real big potential market, and these fellows had the right idea, and Mr. Shafer is now with Rea, who also had the same idea with regard to magnet wire.

Q. Did you acquire any other personnel at the time?

A. Seems to me one or two other fellows; clever, inventive type men. But I don't recollect their names.

Q. You acquired machinery that you paid approximately ninety thousand dollars and two or three individuals—Yes, it was really sort of a homemade research equipment.

A. More of a glorified laboratory that we picked up. It was not a production facility at all.

Q. Mr. Magee, I hate to end your testimony on a sad note, but we began your testimony discussing what had happened to Alcoa's position as a producer of primary aluminum. Now, I would like to ask you, if you know, what Alcoa's return on gross revenues was in 1950?

A. On the gross revenue in 1950, it was 9.7 per cent..

Q. And what was it in 1961?

[fol. 2043] A. In 1961, 5 per cent on gross revenue.

Q. What was Alcoa's return on shareholders equity in 1950?

A. 13.7 per cent.

Q. And what was it in 1961?

A. 5.6 per cent.

Q. What was Alcoa's return on invested capital in 1950?

A. 9.3 per cent.

Q. And what was it in 1961?

A. 3.7 per cent.

Q. Your witness, Mr. Melchior.

Cross-examination.

By Mr. Melchior:

Q. Mr. Magee, in the beginning of your testimony you discussed at some length the plans, I believe, that perhaps some of the companies in the industry and your own company may have for expansion. I wonder if you would tell us a little bit, if you know, and I have the impression that you do, what are some of the problems involved in constructing a reduction plant? What would be your major problems?
[fol. 2044] A. You talking about Alcoa's, for example?

Q. Yes. If Alcoa were to construct a new plant at the moment, if it didn't have so much present over capacity, apparently it has, if it wanted to construction a new plant, would the site be the problem?

A. It could be one problem. I was going to say the problem of economic location of a plant to supply the market would probably be one problem. They are quite complex. You would have a labor problem, you would have a fuel problem. You would have power supply problem. There are no one single problems paramount over another. No mystery about building a smelting plant these days, as far as the technical difficulties or the available equipment, and that phase of it is concerned. It is largely a matter of good judgment in selecting the location and site and getting a good power supply and so forth.

Q. Well, do you generally try and locate a plant close to raw materials, or would it be close to the source of power?

A. Of course, the logical thing is that I didn't—the situation where you could locate it all, if you had everything all [fol. 2045] in one place; the bauxite and the power and the fuel and the market. But—

Q. There aren't any more places like that, are there?

A. Well, no, you are just about right. So you have got to compromise and each company, depending on its own individual situation, will locate its smelting plants, depending entirely on its own geographical problem; I would say.

Q. Well, is the source of power a major problem, an expensive source of power, or is there ample electric power available?

A. There seems to be ample electrical power, if we are talking about the United States.

[fol. 2046] Q. I was thinking of the United States.

A. Yes, there seems to be no difficulty about that as you probably know today. One of the real problems in the electrical industry is the fact that the electrical power supply has caught up with the demand and there is a great surplus of power at the moment in the United States.

Q. I see. How long has this been the case?

A. Just the last few years. Of course, utilities have overbuilt and we have had sort of a setback, so that the big generating facilities of the big electrical companies today are not very busy. They would like to have more business. Take the Northwest for example. There has been a great surplus of power up there at the present time. But the electrical power, this is proverbial, they are building ahead so there is no problem of power supply today as there used to be. The great interconnected utility systems have made a big difference in this situation as far as aluminum is concerned.

[fol. 2047] Q. At one time this used to be a major problem but you don't consider it to be one any more?

A. I really don't. Not like it used to be. Again it is a matter of judgment where you might make the best kind of a program, an electrical power program. One fellow will take a certain type of preference; another might go a different route.

Q. These companies seem to change from time to time; sometimes one is short and another time another is short?

A. Exactly.

Q. Is that the way it has been in your experience?

A. Exactly.

Q. Has Alcoa—you might have given these figures and if you don't have them precisely you can just say so, since the ending of Korea has Alcoa expanded its capacity to a pretty substantial extent?

A. The only real expansion since the end of Korea has been the Warwick Plant which I mentioned earlier. That is the proposed plant for soft coal on the Ohio River and Southern Indiana.

Q. Was there any government assistance involved in this expansion?

A. No.

Q. None at all?

A. No.

Q. This is entirely on your own?

A. Entirely our own, yes.

[fol. 2048] Q. With respect to the construction since Korea by any of the other existing primary producers of your own knowledge, do you know whether there was any federal government assistance in their construction?

A. Yes. Since the end of Korea in the United States, we have on record in the industry that there has been some outside the United States parenthetically, but it is the Harvey Aluminum I believe that had government assistance. The Anaconda program had none, I believe. I don't think there was any in the case of the Olin-Mathieson. It was just in the Harvey that there was government assistance.

Q. How about the period between World War II and Korea, the period during World War II and subsequent to World War II up to 50 and 51, Alcoa I believe extended somewhat during that period?

A. Yes sir. The only real expansion in that period was the Korea program on the part of several producers.

Q. Was there some federal assistance involved directly or indirectly?

A. Only through the stockpiling arrangements. And of course in those days it was controlled materials. In other words the government gave priorities to control materials as it did to other facilities. But simply the stockpile arrangements that the government made in return. And I don't

know whether you call this government assistance or not. Because the industry at that time spent its own private capital and in return agreed to put aluminum in the government's stock pile. Now you can decide whether that was a benefit or otherwise.

Q. Yes.

A. Sometimes we think it was otherwise.

Q. Did you receive an indication from the federal government what the purpose was, from their standpoint?

A. Yes. We were only allowed to build two plants. They specified exactly what capacity you could build and that was it.

Q. And their purpose was to build a stockpile for future war time emergency?

A. That is exactly the program. Rather than buying it abroad. Also to build up some competition for Alcoa.

Q. What do you mean by that?

A. Well actually the specifications as to the productive capacity that was allowed to be built by the respective companies was gauged on the basis of what the government decided our competitors could build and what we could build. And we were permitted to build a specific amount and the others were permitted to build some greater amounts.

Q. They were smaller than you at that time, of course?

A. Exactly. This was the government's decision.

Q. Now since World War II and particularly since Korea and during Korea I think you said there were times when there was some temporary shortages of aluminum and there was some government programs of allocating primary aluminum to non-integrated companies. You are generally familiar with that program?

A. Yes sir.

Q. I believe you spoke on direct that in some of those cases you used the historical method of allocating the short supply of aluminum to your customers. Could you very briefly tell me how that worked?

A. Yes. It obviously had to be somewhat arbitrary because there were no rules of the game that anybody, that any authority set up. Many companies did this same kind of thing because they had to. It was not just aluminum that was in short supply.

Speaking of the Korea period, it was largely passed Korea, subsequent to World War II and coming into Korea there was for a while an over-surplus of aluminum and there were never any real shortage periods there that were of significance. So it was past Korea that we ran into problems of allocation and just prior to Korea when we ran into problems of allocation when the government controls went on.

If for example in any particular area, if I recollect, and I am not sure I do the details of it, but certainly we had a definite record of the amount of tonnage that we shipped say over a period of five years. I believe it was a five year period that was chosen prior to this time. And that record would total up to a certain sum of aluminum produced by us and that was shipped, let's say to 100 customers and then [fol. 2051] allocated, and of course in the various products of ours you had a similar situation—so that we totalled the whole thing up and simply put a percentage on it, and that was the allocation in effect. That is the simplicity of it.

Q. And the word historical means based on what they produced in the plant—

A. Based on what they purchased in the past and on a percentage basis summing up the total, and that was it.

Q. How about those companies that didn't have a historical basis—new companies in the industry?

A. Those became a real problem because you were faced with the situation about the fellow who came into the industry at this time and wanted a supply of aluminum and at the same time pressures from the company who for all practical purposes had every right to expect to be taken care of because of past experience. So almost without exception we had to very frankly say to the newcomer "we are sorry but we must take care of our customers with whom we have done business before." Assuming it was not a military customer.

Q. Oh yes.

A. Bear in mind many times a good many of those people had particular allocations and therefore could get a control material application—the new ones.

Q. Well as a matter of fact I guess it was to take care of those people without the historical background that the [fol. 2052] federal government arranged some sort of a

set-aside program for non-integrated and small business concerns?

A. Exactly. And this is the problem we faced in Washington. Very frankly we always sat down with the people in Washington and pointed out the real problem, that here was a man who through no fault of his own arrived in business at a period like this and obviously needed aluminum, and particularly if he was a small business concern. Many times he could get a government allocation of some type or other. Of course at that time there were these competitors of ours going into the business and many of those fellows were taken care of by the new aluminum companies going into the business.

Q. I was interested in your testimony this morning as to the need prior to the Rome merger, when you felt the need for diversifying your wire and cable products. I am also interested in your comment about the testimony of an earlier witness—I guess you were referring to the president of General Cable.

A. I was.

Q. You recall I asked him if he thought aluminum would ever replace copper and he explained to me that he didn't think a large area of the wire and cable field would be taken over. I think you commented on it in your direct testimony. What success do you think, that the aluminum wire and cable factor, will have in replacing copper for most of its conductor use?

[fol. 2053] A. Well perhaps we are too optimistic but we believe that we still have some inroad to make in the copper business, in the copper electrical conductor business.

Perhaps I should qualify this immediately by pointing out to you, we talked about this transformer business, the windings of electrical machinery. The only way you can really eventually build aluminum into these markets where no material has been in existence is through some research and development work, some trial work on the part of your customers. You don't do it overnight. You may have confidence that aluminum will work but it doesn't always do it. But we have been reasonably successful and I have no bone to pick with my friend this morning but that is a very strong wire and cable company, and I really should defer to his better judgment perhaps, but I think we will make more inroads in

the electrical conductor business with aluminum than indicated this morning. I am sure whoever gets paid the salary in my job, whether it be Magee or my successor they got to be battling away on this because this is our stock in trade. We believe we will be successful. Of course if everything should settle down in Africa and they find some big copper mine and the price of copper goes down, this would be an adverse factor. My statement is based on the fact that copper is a reasonable commodity based on what it was some years ago.

Q. Do you feel that the reason aluminum is making such [fol. 2054] great inroads into copper, in the copper field today, is a question of price?

A. Yes, a lot of it, particularly in this insulated wire field. In the bare wire field of course we have some very definite advantages—long span with a steel core and so on. But largely you have the price factor involved, yes. We think aluminum has some other advantages which we tried to sell.

Q. You think aluminum does have some peculiar advantages?

A. We think it does in many places, yes.

Q. Now I would like to direct your attention to the comments on Rome and Alcoa getting together in 1952 and the breakdown of negotiations, and the fact that negotiations were subsequently revived and the merger was completed. Did you consider Rome to be the most desirable of the independent companies to add to your organization? You apparently canvassed the field. We can tell by some of the documents that you looked at several of the companies and came back to Rome. What was it about Rome that you people in Alcoa considered so desirable?

A. I suppose there are always intangibles. I wouldn't say it was necessarily the best possible acquisition. That would depend on the judgment of various people. When you analyze it you might determine some other company might be more valuable to us. There was the personal factor. Our relations over the years; our confidence in the people.

[fol. 2055] Q. Was it because they were in the copper wire and cable field and you were in the wire and cable field in aluminum?

A. They had a very fine research organization that was moving ahead in the insulating field where we had no background at all.

Q. And I believe you gave some estimate of the time and money you thought it would take if you did the job yourself?

A. Yes.

Q. Mr. Magee do you know of your own knowledge about what percentage of all domestic pig and ingot aluminum is actually imported into this country, in round figures?

A. What percentage is imported?

Q. About what percentage is used in a year's time?

A. There are some actual statistics and it has been varying lately. Oh yes, I guess this is what it is. This is Alcoa's production, its percentage of yearly supply, this is Alcoa's percentage, production percentage, of the total yearly U. S. primary and the U.S. imports in 1960—it was 34 percent. But you asked me the percentage of imports. Let me see—U. S. primary production is four billion pounds in 1960 and the imports about three hundred ten million. So we got there roughly plus ten percent in that particular year. If we take the year before, it varied.

Q. Yes.

A. For example in 1958 it was 510 million over three billion. So there it went up quite substantially. That is the [fol. 2056] year that I guess we were all hit with some—a lot of people were hit with some contracts that carried over from the active years of '56 and '57.

Q. Do you know what the import duty is on primary aluminum?

A. About $1\frac{1}{4}$ cents today.

Q. $1\frac{1}{4}$ cents a pound?

A. $1\frac{1}{4}$ cents per pound on Canadian aluminum.

Q. On Canadian aluminum?

A. Yes.

The Court: It seems to have jumped up back in '53 I guess it is—'52 or '53.

The Witness: That was the effect of the Korean situation. That was the Canadian aluminum which came in largely to help the production facilities in this country for the Korean period. Canada is a very substantial exporter into this country. It is the biggest.

By Mr. Melchior:

Q. You mentioned—I don't believe you used the term "commodity pricing" but I had the impression you were describing something of that nature in your direct testimony. Do you know what commodity pricing is? You ever hear of the term?

A. Well it is a term used in the trade. I think it is an old term in a lot of industries. It is the price—if I understand the term correctly—it is the price on some product that applies to some particular commodity. For example, I suppose a commodity price could be one that is on furniture sheet or furniture tubing. In other words used in the furniture trade. And the price established for the particular product that goes in the furniture, let's say.

Q. In other words if this same product went into a different line of production, the price going into the other line may be different—your price may be different; is that it?

A. It may be. But largely the specification, let's say, for this product is the individual specification very often. It may be finished; it may be tempered; an alloy, but usually it is a competitively derived price.

Q. One of the earlier witnesses testified,—I don't believe you heard him testify—I believe to the effect that in some cases aluminum pipe which is used for aluminum conduit may be characterized as selling for commodity price. Would you know what he meant by that?

Mr. Bergson: I don't recall any such testimony, Your Honor.

Mr. Melchior: I will rephrase the question. I think there was but I will rephrase the question.

Q. Are you familiar with the use of the term "commodity pricing" in connection with aluminum pipe to be used for [fol. 2058] aluminum conduit?

A. No. I wouldn't exactly call it a commodity price. I guess these terms are used rather loosely in the trade.

Q. Yes.

A. But there is a price on aluminum conduit but whether that could be termed a commodity price or not, I don't know. It depends on the viewpoint of the individual. Aluminum conduit is a specific product made for a specific purpose and

use. Specifications are set up, has to be passed by the underwriters; lacquered inside and all this kind of monkey business.

Q. Is aluminum conduit a commodity price item for Alcoa, would you say?

A. I don't see where the "commodity" adds anything to it. I don't see the significance. All I am saying is there is an industry price or there are prices. Aluminum conduit is a commodity—I suppose you might call it a commodity. We call it a product. It is a product that is manufactured and there is a price on it. But the price is based on what you could sell it for. What the trade is willing to pay for it. But conduit is a specific product. Just as a soft sheet or a rod or a piece of pipe. We have pipe. We have tubing. We have conduit.

Q. It is a specific product which you can distinguish?

A. Yes. And I don't quite follow the commodity angle, because I don't see where commodity fits this particular term.

[fol. 2059] Q. Well I won't pursue it.

A. I don't see that it makes any difference.

Mr. Melchior: No further questions.

Mr. Bergson: No redirect.

(Witness excused.)

The Court: Recess until tomorrow morning ten o'clock.

The Clerk: Court is in recess until tomorrow morning ten o'clock.

(Whereupon at 5.10 p.m. o'clock an adjournment was taken to February 28, 1962, at ten o'clock a.m.)

Transcript of hearing—February 28, 1962

[fol. 2062] Mr. Bergson: Shall I proceed, your Honor?

The Court: Yes.

Mr. Bergson: Mr. Davies.

RALPH V. DAVIES, called as a witness in behalf of the Defendants, being first duly sworn, testified as follows:

Direct examination.

By Mr. Bergson:

Q. Mr. Davies, will you please state your name and address?

A. Ralph V. Davies; 5040 Warwick Terrace, Pittsburgh, Pennsylvania.

Q. Mr. Davies, were you formerly employed by the Aluminum Company of America?

A. I was.

Q. Are you presently in a retired status?

A. Yes, for a little over two years.

Q. Are you presently a director of the Aluminum Company of America?

A. I am.

Q. How long have you been a director?

A. I think since 1958. I think that's right.

[fol. 2063] Q. When were you first employed by the Aluminum Company?

A. In 1919.

Q. And will you please state for the record your successive stages of employment up to the time of your retirement?

A. Well, I started in the Old Technical Treatment Bureau, and then I transferred to the Sales Department and was in sales offices in Rochester, New York, Buffalo,

New York, Washington, D.C., New York City, and then came to Pittsburgh in 1943.

Q. Now, when you were in New York City were you in charge of the New York office?

A. I was manager of the New York office, yes, sir.

Q. And you came to Pittsburgh in 1940?

A. '43.

Q. '43. And what were your duties in Pittsburgh then?

A. You mean when I first came?

Q. From '43, yes.

A. From '43 on. When I first went there I went as the sales manager for what we called pig in those days. I was only on that job a relatively short time when I was made [fol. 2064] assistant general salesmanager in charge of sales development. And in 1947 I succeeded George Stanley as vice-president in charge of sales.

Q. And how long did you hold the position of Vice-President in Charge of Sales?

A. Until my retirement.

Q. Now, as vice-president in charge of sales did your duties encompass the sale of wire and cable products?

A. Yes.

Q. Now, when you first became manager or vice-president in charge of sales what wire and cable products was Alcoa selling?

A. Bare ACSR and all aluminum. Those were the principal products we were selling. Oh, there was a textile covered cable, triple braid weatherproof, I think they called it, but the sales of that were really insignificant.

Q. Did there come a time when you considered the advisability of Alcoa's selling covered or insulated conductor?

A. Yes. I think the pressure began to come in from, well, through the staff men in Pittsburgh, who in turn were getting it from the sales offices to the effect that we should [fol. 2065] certainly diversify because we were not competitive. We were dragging behind in the parade at that stage.

Q. Now, when did you make the first effort to do something about this problem?

A. My first effort, as I recall it, I called Mr. H. T. Dyett, whom I had known for a number of years, and for whom I had high regard.

Q. Would you identify Mr. Dyett?

A. Mr. Dyett was then Chairman of the Board of Rome Cable Corporation.

Q. And can you fix the time when you called him?

A. Yes. That was late in 1951; the fall of 1951, I would say. Late fall.

Q. Now, what did you do when you called Mr. Dyett?

A. I asked him, I guess I told him we were lamentably behind, I guess he would know that, in covered insulated wire and cable and asked him if we could make some arrangement whereby they, Rome Cable, would supply us with technical assistance and know how.

[fol. 2066] Q. So that you could make your own insulated wire and cable?

A. Yes, sir.

Q. Now, as a result of that telephone call did further events ensue?

A. Yes, I believe Mr. Dyett said he would be in touch with me in the near future. The next happening, I think Mr. Fraser called me and we made a date to meet and at that time he put out the proposition of a toll arrangement whereby they would cover or insulate or whatever was necessary to be done the material which we would furnish them.

Q. And what was your reaction to this proposal?

A. At that time, you mean?

Q. Yes.

A. Well, I thought that that was all right, that that certainly—well; it took us off of dead center; put it that way.

Q. Now, at the time you entered into the toll arrangement, was there any discussion as to the possibility that Alcoa might at a subsequent date insulate or cover its own aluminum line wire and multiplex?

[fol. 2067] A. Oh, yes. I would say right from the start we made statements to that effect. In fact, we were frank throughout the whole period of time that sooner or later we might feel it necessary to take some action on our own. There was never any misunderstanding on that score.

Q. And did there come a time during the course of the arrangement when you did take some action?

A. Yes.

Q. And when was that, if you recall?

A. Oh, that was about 1955. We decided to install equipment for the polyethelene covering.

Q. And did you go ahead with that?

A. We went ahead with that, yes, sir.

Q. Do you recall what equipment was involved?

A. Well, I know it required an extruder. I am not very technical on this.

Q. Well, let's pass it then.

A. All right.

Q. What prompted you to commence the manufacture of your own polyethelene line wire and triplex?

A. I think there were several reasons. Our sales department—[fol. 2068]—of course, they are always pressuring us on these kind of things—they weren't satisfied. They were being told by customers that we weren't really contributing much, we were just selling someone else's product. We also—I think we had a strong feeling that we were still, oh, just nibbling around the edges. We weren't really getting in like we had hoped we would; and time was passing.

Q. Now, did you find, after you put in the polyethelene extruder, that you had made any substantial step in your diversification program?

A. We had made a step, but I don't know whether I would call it substantial.

Q. Now, did there come a time in '57 when you gave consideration to broadening your activities in the wire and cable field, insulated wire and cable field?

A. Yes. In '57 we decided now we had taken one step on polyethelene, we should go ahead with the neoprene coating, and we made studies and so on and put costs together as to what would be involved in that.

Q. Now, that neoprene coating would have been limited [fol. 2069] again to the aluminum line wire and triplex construction or multiplex construction?

A. Yes.

Q. And you made an investigation as to determine whether or not you should do that?

A. Yes, sir.

Q. Now, did you take any other steps at the same time in regard to your activities in the insulated wire and cable field?

A. At the same time we were looking into the neoprene proposition?

Q. Or shortly afterward.

A. Or shortly afterward. Yes, that was when we started negotiations with Rome Cable Company, discussing a merger with them.

Q. And what was your purpose in discussing merger with Rome at that time?

A. Well, several things had happened. It comes back in a way to the effect that we had to diversify more to become competitive in the marketplace. We also had the thought that if we were more active in this picture we could—we were quite optimistic, as we should have been, that we could substitute quite a little aluminum for copper and we thought [fol. 2070] we just had to have more knowledge of the whole subject to increase the consumption of aluminum in that field as well as to make diversified so as to make ourselves competitive with what was happening in the field at that time.

Q. What was happening in the field at that time?

A. Well, of course, for some period of time the copper companies were all going into the aluminum business, more or less, and then the next thing that happened was that a couple of the aluminum companies decided to go into the copper business: so you might say we were catching it both ways. The copper people were in our back yard, and now the aluminum people were going into the copper back yard, so we were becoming less and less competitive.

[fol. 2071] Q. Now, when you talk about copper people, who do you have in mind? What companies do you have in mind?

A. Well, there were a number of them. I don't know if I recall them all. There is Anaconda, Nehring, Essex, I guess General Cable, Southwire, Central; I think one or two others.

Q. All of those companies were getting into both aluminum and copper or were in both aluminum and copper?

A. Either were in or were getting into both, yes, sir.

Q. You mentioned also that some of the aluminum companies were getting into copper. Which aluminum companies do you have in mind there?

A. Well, Kaiser Aluminum and Chemical acquired the wire and cable division of U.S. Rubber and Olin Mathieson acquired Southern Electrical.

Q. Mr. Davies, I show you Government's Exhibit 161, which is a letter from Mr. P. T. Coffin to Mr. W. K. Unverzagt, copy of which was sent to you, and I invite your attention to paragraph numbered 7 of that document, on page 5, and ask you to refer or to note the phrase "Most Industry rocking announcement and certainly the most threatening [fol. 2072] to Alcoa's position," and ask you what message that memorandum conveyed to you?

A. Well, I think that in a way conveyed—well, it conveyed what I have been discussing in a way what had happened during that period, the position it put us in. Here we had dual rollers and of course Coffin was a prominent advocate, he had been very strong in urging people in the organization to go ahead for quite a while.

Q. Did you personally, to what industry was Mr. Coffin referring, so far as you know, when he used the phrase "industry rocking"?

A. Well, I think that was, well, he is speaking about the wire and cable industry, but he is really pushing his point that now the need for diversification and threat of competition is more serious.

Q. Now, did you consider the acquisition, you personally, consider Kaiser's acquisition of U.S. Rubber or Olin Mathieson's acquisition of Southern Electrical "industry rocking"?

A. No, I wouldn't consider it industry rocking.

Q. Do you know what position U.S. Rubber occupied in aluminum Wire & Cable?

A. I would say a relatively small position.

[fol. 2073] Q. Let me show you the Government's charts—

A. May be very small, not relatively small, to keep it right.

The Court: What is that number, Mr. Bergson?

Mr. Bergson: 435. Government's Exhibit 435.

Q. Do you know when Kaiser acquired U.S. Rubber?

A. It was early in 1957. I would say March or April. It was March—February, March, April, around in that period.

Q. Now, what does the Government's chart show was the U.S. Rubber Plant's production of ACSR and aluminum cable, bare, in 1956, the year immediately prior to the acquisition?

A. It shows zero per cent.

Q. Now, addressing yourself to Government's Exhibit 436, which relates to shipments of aluminum wire and cable insulated or covered, what percentage does it show that U.S. Rubber had in 1956, the year prior to the acquisition?

A. 3.2 per cent.

Q. If you were considering the aluminum wire and cable industry, would you, would it be your opinion that this [fol. 2074] acquisition had any, effect on the aluminum wire and cable industry?

A. Oh, no. Not at all.

Q. Again directing your attention to Government's Exhibit 435, which is the chart entitled "Shipments of ACSR aluminum cable, bare," I ask you to look at Olin Mathieson Corporation and ask you if you recall what year Olin Mathieson acquired Southern Electrical?

A. That was in 1957.

Q. And what was Olin Mathieson's production of ACSR or aluminum cable in 1956?

A. Zero.

Q. And again addressing your attention to Government's Chart 436, I invite your attention to Olin Mathieson in 1956, and ask you what their production of aluminum wire and cable, insulated or covered, was?

A. Zero.

Q. So in your opinion, would that acquisition have any effect on aluminum wire and cable business?

A. No, it would not.

Q. So that what you were concerned with and apparently what Mr. Coffin was concerned with, was the effect of these acquisitions in the general field of wire and cable?

[fol. 2075] A. That's right, in the general field, plus mostly copper business.

Q. Now, you said that you, that these events plus the fact that the copper producers were going into aluminum led you

to the conclusion that Alcoa should do something about diversifying its product line in wire and cable?

A. Yes, sir.

Q. And I think you said just before I started asking these questions that you commenced negotiations with Rome Cable?

A. That is correct.

Q. And why were you interested in Rome Cable?

A. Well, for several reasons. We knew them well. We felt they were competent people. We felt that they knew their business. They had technical knowledge and facilities, of which Alcoa had none. Alcoa was just not qualified at all in that field. And everything we had heard about Rome Cable in the trade was complimentary. We knew their people and liked their people.

[fol. 2076] Q. Were you interested in Rome Cable because part of their product line included these so-called overlap products which are on the product board, the photographic copy of which is in evidence as defendant's Exhibit 20?

A. These aluminum products?

Q. Yes.

A. Oh, no, not at all. They were not really a factor at all in that. We knew that.

Q. Now, were you interested in them because they were engaged in the conduit business?

A. No. If my memory is correct, in spite of the fact that I had known the Rome people for a number of years and been at the Rome plant and talked with their people over a period of time, I don't think I even knew they were in the conduit business until we started negotiating. At least, that is my recollection. It certainly wasn't interesting at all. That wasn't the purpose. Maybe it was interesting, if you have something else thrown in; that is fine, too, but that didn't enter into the picture at all.

Q. Well, now, when did these negotiations with Rome Cable take place?

[fol. 2077] A. Through—these first negotiations?

Q. Yes.

A. Through the summer, summer and fall of 1957.

Q. During the course of these negotiations did Alcoa make an offer to purchase Rome Cable?

Q. Yes.

Q. Do you recall what that offer was?

A. The offer was in the form of common stock, a certain number of shares of common stock. As I recall it, the market price of the Alcoa common stock at that time—it would come to approximately \$24 million.

Q. Did Rome accept that offer?

A. They certainly did not.

Q. Did they make a counter offer at that time?

A. They did not.

Q. And what happened to the negotiations?

A. We discontinued negotiating, I think, in about October of '57.

Q. Now, in October of '57 or after the Rome negotiations terminated, what action, if any, did Alcoa take to pursue its plan to diversify its product line?

[fol. 2078] A. Well, of course, first we talked a lot about it. Then we decided to see if we couldn't get someone in the consulting field to be of assistance to us.

Q. And did you act on that decision?

A. Yes, we acted on that.

Q. And what did you do?

A. We retained Ebasco Services.

Q. For what purpose, Mr. Davies?

A. Well, at the start we asked for advice, and then we asked them to act for us, make an investigation as to what firms might be available for purchase and that they should act on our behalf to see whether there was any interest.

Q. Why did you ask them to act on your behalf?

A. Well, in a case like that, it wouldn't have been very good for us to run around to one another. Of course, rumors spread fast; there were rumors at that time that other mergers—that some of our competitors were looking into other firms, and all we had to do was to go near one, and it would spread throughout the industry that Alcoa was out looking for somebody. I think that would hamper negotiations; it would certainly raise the price.

[fol. 2079] Q. Now, did Ebasco perform these services for you?

A. Yes, they did.

Q. Will you tell us what the first step was?

A. First they made up a list—

Q. Before we get to that—excuse me.

A. I beg your pardon.

Mr. Bergson: Will you mark this as defendant's Exhibit AR-77 for identification?

(Defendant's Exhibit AR-77 marked for identification.)

By Mr. Bergson: (Continuing)

Q. Mr. Davies, I show you defendant's Exhibit AR-77 for identification which is a letter from the president of Ebasco Services to you, dated April 3, 1958, and I ask you what that letter purports to be.

A. Well, this expresses in better language what I started to say a couple of minutes ago, I think. In other words, Mr. Gardner is outlining the procedure which they would follow.

Q. And did Mr. Gardner say—read the second paragraph into the record.

[fol. 2080] A. This one right here?

Q. The second paragraph.

A. "As we discussed, the first step would be to prepare a list of companies in the insulated cable and wire manufacturing field from published and other available sources. Pertinent data would be compiled on each, including size, sales volume, products, earnings record, capitalization, stock ownership, markets served, location and size of plants, affiliations or connections with other companies, banking connections and the like. From this preliminary data a number of companies will be selected by consultation with you as being most suitable for further study and more complete data will be obtained on these companies."

OFFERS IN EVIDENCE

Mr. Bergson: I offer defendant's Exhibit AR-77.

Mr. Mahaffie: No objection.

The Court: Received.

(Defendant's Exhibit AR-77 for identification received in evidence.)

By Mr. Bergson:

Q. Now, at the time you retained Ebasco Services to make this study for you, did you tell Ebasco what you wanted [fol. 2081] them to look for for you in the way of a company?

A. Yes.

Q. Can you tell us what you asked them to look for?

A. Well, in general it would be the same qualities which I mentioned before which we thought Rome had; in other words, a company well equipped technically, making products of good quality, having good management, having good trade acceptance and people with whom we thought we might be compatible. I think those are the essential qualities.

Mr. Bergson: Will you mark as defendant's Exhibit AR-78 for identification a memorandum dated June 16, 1958 to Mr. Richter from Mr. Huebner, both of Ebasco Services, Inc.

(Defendant's Exhibit AR-78 marked for identification.)

[fol. 2082] Q. I show you Defendants' Exhibit 78, which purports to be a list of considerations to be taken into account in examining prospective companies for Alcoa and ask you if that fairly and accurately states the considerations that you had in mind?

A. Yes, I think that is well stated.

Mr. Bergson: I offer Defendants' Exhibit AR-78 into evidence.

Mr. Melchior: No objection.

The Court: Received.

(Defendants' Exhibit AR-78 for identification received in evidence.)

Q. Now, you retained the Ebasco. What did Ebasco do for you?

A. I think they came up with a list of some hundred and twenty-five or thirty companies.

I think they examined that many and then out of that number of firms which they found in the business they made us a smaller list which contained quite a little data on the companies. I think they had brought that list down to some,

if I remember correctly, it was 28; it might have been 30, but I think it was 28. And then we talked it over with them and selected a certain number of firms which we felt [fol. 2083] might best serve our purpose.

Q. You say a certain number of firms. How many firms was Alcoa interested in acquiring?

A. Oh, we only wanted one.

Q. Now, do you recall which firms you agreed with Ebasco should be further investigated?

A. Yes.

Q. Would you state which firms those were?

A. Okonite, Simplex, Kerite, Triangle, Walker Brothers, Crescent Wire & Cable.

Q. Now, did you select any of those companies because they were engaged in the business of manufacturing any of these overlap products?

A. No. Not at all, because I don't think any of those firms were any factor in that business at all.

Q. Well, let's see what they were. Let's look at Government's Exhibit 435, and I ask you whether you find on the list of companies shipping ACSR and aluminum cable, bare, the Okonite Company?

A. I do not.

Q. Simplex?

A. No.

Q. Kerite?

A. No.

[fol. 2084] Q. Triangle?

A. No.

Q. Walker Brothers?

A. No.

Q. Crescent?

A. No.

Q. Now, directing your attention to Government's Exhibit 436, which relates to shipments of aluminum wire and cable insulated or covered, do you find on that list any of the companies mentioned? Let's take Okonite first.

A. Yes, I find Okonite.

Q. And how much of a factor were they in the business in 1958?

A. Two-tenths of one per cent.

Q. Now, do you find Simplex on that chart?

A. No.

Q. Do you find Triangle on that chart?

A. No.

Q. Do you find Walker Brothers on that chart?

A. Yes.

Q. And how much was Walker Brothers producing?

A. Six-tenths of one per cent.

Q. Do you find Crescent on that chart?

[fol. 2085] A. No.

Q. Now, are any of these six companies engaged in the conduit business, to the best of your knowledge?

A. I would just assume that Triangle was because they have that in their name. I didn't know that they did, I assume from their name that they must be in the conduit business.

Q. Did you know at the time whether any of the others were in the conduit business?

A. No, I wasn't interested.

Q. Now, after the six companies were selected what transpired?

A. Quite a period of time was consumed in running them down through various sources to see whether there was any interest on their part.

Q. And what was the result?

A. We drew a blank.

Q. I beg your pardon?

A. We drew a blank. No interest.

Q. I didn't hear because that truck was going by. So that that program apparently came to an end?

A. Correct.

Q. Now, did there come a time in October of 1958 when this program was at an end that Alcoa again examined [fol. 2086] what it should do?

A. Yes, they certainly did.

Q. Now, what did Alcoa do at that time?

A. Well, of course, again we had a lot of conversation. A study was started about that time, too, as to what would be involved in going ahead on our own, assuming we could make, could not acquire what we needed, and also to get an idea of what it might cost, what would be entailed, what it might cost, say, if we decided to go ahead on our own.

Q. And what problems did you consider in connection with this undertaking?

A. Well, it was full of problems. For one thing, I guess, as I said, we had no one with the proper technical knowledge and experience, which meant leaving out plants and plant sites and all that. We had to acquire personnel somehow. Right there was a large problem presented.

And, of course, the next question is where would you put it. That is a real question, too. And how much would it cost, because Alcoa always has so many places to spend its money that you have to consider that pretty seriously.

Q. Did you also consider the time factor?

[fol. 2087] A. Oh, yes, the time factor was very important because here we were, I guess I used the expression before, we were lagging behind the parade, and to go into this on ourselves was going to be a long time proposition. Just the planning and engineering alone was going to be a long time before you get down to business. So we felt that that was one of the very serious disadvantages, as well as the fact that, well, when you get going on these plants, no matter what you think you are going to spend, you always spend a lot more.

Q. About how long do you think it might have taken you to get into the wire and cable business, in the manner that you desired?

A. Well, before you—I might, when you say get in, and then of course you have got to consider, you get into something, of course, a lot of times faster than you make a satisfactory product. Then after you make a satisfactory product, it is quite a long while after that before you begin to make money out of it. So I would say in view of the fact that we felt the engineering would take a year before we got anything else done, I would say five to ten years, depending on what luck we had in acquiring people and deliveries.

[fol. 2088] Had Alcoa had any previous experience in building new establishments?

A. Oh, yes, we built a lot of them. That is why I was kind of leery about this one.

Q. Can you give us an illustration of a situation where Alcoa went forward with a new production facility?

A. Yes, I can. Take the example of the Davenport, Iowa sheet mill. When we went into that it was supposed to be a

twenty-five million dollar plant. Before we got through, I am not talking about today, now, I am still talking about, really you may say before that plant, it was a seventy-five million dollar job because after we started, people wanted to do this and that, they said, "Oh, well, there is no use putting up that plant unless you do this and do that," and so on. And in that case we knew our business, or we thought we did. We picked experienced foremen, experienced rollers from our other plants, and sent them out to Alcoa, to Davenport. Well, we, in the sales department, became very impatient because when they finally had this very expensive plant finished, the first thing that happened the quality [fol. 2089] wasn't too good, and so our delivery suffered. We were allocating metal there and then we would fall down on shipment. Then we didn't make any money, so, of course, that was worse. But I will say I don't mean to paint that too black, because that turned out to be, when everything was going right, to be a fine plant.

Q. How long did it take you to get that facility in operation, in a satisfactory fashion?

A. Operation? In making money? I think that took five years. And that is where we were supposed to know what we were doing.

Q. Now, Mr. Davies, if Alcoa decided to go ahead on its own, or if there were recommendations to go ahead on its own, would that recommendation require your approval?

A. Well, I would be one of several to approve. Of course, I wouldn't make the final approval.

[fol. 2090] Q. On the basis of the facts known to you in 1958, would you have approved such a program?

A. No, I would not.

Q. Why?

A. Well, for several reasons. One would be that the amount of money which seemed to be involved would kind of put a roadblock in my mind.

Q. How much money would have been involved?

A. I think we were talking thirty-five or forty million dollars and with the feeling that before we got through it would be more than that; and the time factor was still—between the money and the time—no, I wouldn't have been in favor of spending that much money.

Q. Now, did you in October of 1958 pursue any other course in order to get Alcoa into these other products?

A. Yes, I talked to—well, it just so happened Mr. Fraser of the Rome Cable Corporation was going to be in Pittsburgh. He came periodically to talk over our relationship and how things were going and so on, and so I opened the question up with him.

Q. I'm sorry, I didn't hear you.

A. I opened the question up with him again in October [fol. 2091] of '58.

Q. When you say you opened the question again with him, what did you do?

A. Well, I don't recall the exact conversation, but I think, as near as I can recall, I asked him whether there would be any interest in talking more about a merger.

Q. And what was Mr. Fraser's reaction?

A. Well, he certainly wasn't unfavorable to it. He said he would go back and talk it over with his people and be in touch with me later.

Q. And did he do that?

A. Yes, he did.

Q. And when did he get in touch with you?

A. Well, I would say within a reasonable time he called up and we made a date to get together again with himself and Mr. H. T. Dyett.

Q. Do you remember the date and where the meeting was to take place?

A. Yes. That was October 29th in the St. Regis hotel in New York.

Q. Now, prior to October 29th did you communicate with Ebasco Services to let them know that you were resuming negotiations with Rome Cable?

[fol. 2092] A. Yes, I did.

Q. What did you do?

A. I called Mr. Schlesinger there. I called him there—really, I was doing this as to what I thought was the courteous thing to do. In other words, they had been working for us and I think they were really probably still wondering, well, where do we go from here, just like we were. So I thought it was courtesy to call and tell him that we were

about to start further negotiations with the Rome Cable Corporation.

Q. Did you ask him for any advice as to how you should conduct the negotiations with Rome Cable?

A. No, I didn't ask him for any advice. I think I did say, in the course of the conversation, "If you have any helpful ideas, let me know," and he wrote me a letter, I think, two or three weeks—sometime later—analyzing some figures.

Q. I show you government Exhibit 407 which is a file memorandum dated October 28th, 1958, from Mr. Schlesinger to the files, and I invite your attention to the second paragraph or the first sentence of the second paragraph of that letter. I ask you to read that sentence into the record. [fol. 2093] A. "Suggested that he point up to Fraser that Alcoa proposes to get into this business one way or the other and that he outline their philosophy of operating Rome if it should be acquired."

Q. Now, do you know what Mr. Schlesinger meant by "one way or another"?

A. No, I don't recall that part of the conversation because that wasn't in line—

Q. Did he suggest to you—

A. Beg pardon?

Q. Did he suggest to you to state to the Rome Cable people that, "if you don't sell out to us, we are going to go into business anyway"?

A. No.

The Court: What is the number of that exhibit?

Mr. Bergson: 407.

The Court: All right.

Mr. Bergson: At this time, your Honor, I would like to offer certain pages of the deposition of Mr. Schlesinger, whose deposition was taken by the plaintiff and who was examined about this document, and I think it is desirable for [fol. 2094] his responses regarding the document to be in the record, so I offer, without taking the time to read it into the record at this time, pages 88 to 100 of Mr. Schlesinger's deposition which was taken by plaintiff pursuant to notice dated June 30th, 1960 at the U. S. District Court, Southern District of New York, on July 18, 1960.

Mr. Mahaffie: No objection.

The Court: Received. That will be—

Mr. Bergson: I think we had better make this 78-A or 83 because I had planned to read it into the record. I don't have a consecutive exhibit number.

The Court: So that you people don't get mixed up, mark it whatever you wish.

Mr. Bergson: Why don't we make it 83.

Mr. Mahaffie: 83? What pages are you offering again?

Mr. Bergson: 88 to 100.

Mr. Mahaffie: That is all you are offering?

Mr. Bergson: That's all.

[fol. 2095] The Court: Received.

(Defendant's Exhibit AR-83 marked received in evidence.)

By Mr. Bergson:

Q. Mr. Davies, you had this meeting or did you have this meeting that was set up for October 29th?

A. We did.

Q. And who was present at that meeting?

A. Let me see. Mr. H. T. Dyett, Mr. Fraser, Mr. Hickman and myself.

Q. And during the course of those negotiations did Rome Cable make an offer to Alcoa?

A. In the St. Regis?

Q. Yes:

A. Yes.

Q. And what was their offer?

A. The offer was on the basis of four shares of Rome Cable stock—no, four shares of Alcoa stock for five shares of Rome stock.

Q. And what action did the Alcoa officials take on that offer?

A. That offer was turned down.

Q. At that meeting?

A. I think it was at that meeting.

[fol. 2096] Q. Then what was the next event in the negotiations?

A. I think this meeting of October 29th was in New York because Mr. Dyett was on his way to Florida, and I think the next thing that happened was that he called me from Florida to talk about it a little more, and as a result of that

conversation it was agreed that we should have a further meeting and negotiations.

Q. And was such a meeting held?

A. Yes, it was.

Q. Where was that meeting held?

A. That meeting was held in Pittsburgh.

Q. Do you recall when it was held?

A. It was around the middle of January.

Q. 1959.

A. Of '59, yes.

Q. And at that meeting did Alcoa make a counter offer to Rome?

A. Yes.

Q. And what was that counter offer?

A. That was on the basis of a five to three instead of a five to four basis.

Q. Now, were there any discussions—strike that, please. [fol. 2097] What action did the Rome officials take at that meeting in regard to that offer?

A. Well, I think they took a favorable attitude and said that they would present it to their board.

Q. Was there any discussion at that meeting as to how Rome Cable would fit into the Alcoa organization?

A. Oh, yes.

Q. If Rome Cable decided to accept the offer?

A. Oh, yes. Quite a point was made of that. Quite a point had been made of it before as to just how it would fit and how the organization would go and so on, and there was quite a lot of conversation on that score because the gentlemen who were there in the Pittsburgh meeting, as I recall it, were Mr. Fraser and Mr. John Dyett, and it was pretty well outlined to them what the policy of Alcoa would be if this merger went through. I am not sure whether Mr. Magee wrote a letter then or shortly thereafter.

Q. What happened thereafter?

A. Well, the directors of Rome accepted the proposition. There was some modification on the five to three offer.

[fol. 2097a] Q. I show you government Exhibit 6, which is a copy of a letter dated January 21st, 1959, to Mr. Fraser

from Mr. Magee and ask you whether that letter embodies the agreement as to how Rome Cable should be operated if Rome Cable accepted Alcoa's offer.

A. Yes, it does.

[fol. 2098] Q. Now, the next step, I think you said, was that Mr. Fraser took the offer back to Rome and then what happened?

A. Well, I believe it was presented to Rome; presented and accepted by Rome's Board of Directors.

Q. Now, were you present at all of the negotiations between Alcoa and Rome?

A. I believe I was, yes.

Q. During the course of these negotiations did Alcoa at any time use any type of threat to induce—

A. (Interrupting) Oh, no.

Q. (Continuing)—Rome to accept this offer?

A. Most definitely not.

Q. Do you know, Mr. Davies, and I know you have been retired since 1960, whether or not the provisions of the letter of January 21 have been followed out in the operation of Rome Cable?

A. Well, it is my understanding that they have been.

Q. Just one further question, Mr. Davies. I show you to Government Exhibit 110, which is a letter from you to Mr. Fraser regarding Alcoa's supplying aluminum to Rome in 1955.

A. Yes.

Q. Was 1955 a year of shortage?

A. Yes, I guess it was.

[fol. 2099] Q. Was this a temporary situation or a permanent one?

A. This was a temporary situation. It only lasted into the middle of the next year or so.

Mr. Bergson: Your witness.

The Court: Maybe we can take a short recess now. That a short recess.

(Whereupon at this point a short recess was taken after which the trial was resumed.)

Cross-examination.

By Mr. Mahaffie:

Q. Mr. Davies, directing your attention back to 1951 and 1952?

A. Yes, sir.

Q. You testified to the initiation of the tolling agreement between Alcoa and Rome covering aluminum wire and cable?

A. Yes.

Q. Was it the purpose of the toll agreement in so far as Alcoa was concerned, to more or less get Alcoa into the covered or insulated wire business?

A. As a starter, yes.

Q. It was a start?

A. Yes.

[fol. 2100] Q. Along that line. And if you know, Mr. Davies, can you state whether it was the purpose of Rome in entering into that agreement to get into the aluminum wire business?

A. My understanding of my recollection, of course, I am going back eleven years, it had this advantage to Rome, that they would get fuller utilization of their equipment.

Q. I see.

A. I would say it was a good business measure from their standpoint.

Q. You think as far as you know—

Q. Yes.

Q. (Continuing)—that was the principal purpose of Rome. Now, going up to 1955, you testified to Alcoa's decision to go into polyethylene covering on its own. Now, just to clarify that further, that was a definite decision of the company at that time in 1955; was it not?

A. Yes.

Q. To enter that field?

A. Yes.

Q. And Alcoa did enter the field at that time?

A. Yes. Well, it started in in 1955. It really wasn't in [fol. 2101] it in '55.

Q. Well, by the time of the merger of Alcoa and Rome, was Alcoa definitely in the polyethylene covering business?

A. Oh, yes, to a limited extent, of course.

Q. Well, you mean in terms of products?

A. In terms of products?

Q. You mean to a limited extent to the polyethylene products it made?

A. Yes.

Q. So was Alcoa in 1958 still taking any polyethylene products from Rome; if you recall?

A. My recollection is they were.

Q. Was it a substantial amount?

A. I assume it was not substantial. It would be just these things that we were not equipped to make. As far as evaluating it numerically, I couldn't. I don't know.

Q. Was the purpose of Alcoa to become completely independent of Rome in the polyethylene business?

A. No. I think we told them at the time we entered that of course we would still count on them for a certain amount of polyethylene covering.

Q. Would this be in respect to—

[fol. 2101a] A. I think our equipment was rather limited, and I think our knowledge was more limited even than that, so we were bound to want to acquire some products from them.

[fol. 2102] Q. But in 1958 the principal amount of the polyethylene covered products sold by Alcoa were made by Alcoa; would that be correct, sir?

A. I think that would be correct.

Q. Now, going up to 1957, this is when you testified the company, Alcoa, began at least investigating the possibility of using its own facilities to produce neoprene covered products?

A. Yes.

Q. Was a definite decision made in 1957 or '58 that Alcoa would go into neoprene covering on its own?

A. No.

Q. What was the status of that project, let's say, as of 1958?

A. I would say that was sort of in abeyance, maybe.

Q. During 1958?

A. '58. Now, let me think. I have got to get these years—I get mixed up on these years, '57, '58 and '59.

Q. Maybe it would be easier if I put it this way. What

was the status of Alcoa's neoprene planning on the eve of the Alcoa-Rome merger?

[fol. 2103] A. Oh, we had given it up.

Q. You had given up the neoprene planning?

A. Yes, that is my recollection.

Q. And you had determined to continue to rely on Rome for neoprene products?

A. Up until that time, yes, sir.

Q. Up until—

A. Well, you said until the merger, didn't you, up until the discussion of the merger? You might—I am not quite clear on your question there.

Q. Yes. Well, I am talking about January, 1959 or the end of 1958, the beginning of 1959. Now, Alcoa had determined in 1957 to enter into the neoprene business?

A. No, I wouldn't say they had determined to enter it. They had considered entering it and we had made studies of the equipment, what it would cost and so on, but no affirmative decision had been made.

Q. Do you know if funds had been appropriated for the purchase of equipment?

A. My present recollection is that what we call an authorization for money had been prepared but had not been received for final approval.

[fol. 2104] Q. Now, did you at any time in '57 or thereafter advise Mr. Fraser of Alcoa's intentions to enter into neoprene covering?

A. Yes, I think it was before that. I had told him that we were looking into that and might very well go ahead. That was just in line with what we had told him right from the start, that is, before we decided to make any further move, we would give them ample notice.

Q. What happened to your plans following the merger of Alcoa and Rome?

The Court: You mean—

Q. —plans for the setting up of facilities to cover or to apply neoprene covering to wire.

A. I don't think I understand.

Q. Following the merger of Alcoa—

A. You said after the merger of Rome?

Q. Yes. What happened to the plans you had after the merger with Rome, following the merger with Rome?

A. These plans were all dropped. Is that what you mean?

Q. Yes.

A. I didn't get the import of that.

[fol. 2105] Q. I am sorry, that is my fault. Now, with respect to this document that's been marked AR-78, the Ebasco document, would you tell me, sir, how the Rome corporation ranked with respect to each of those factors?

A. Well, of course, we thought from the start that Rome ranked very well in our minds as to having what we desired. Do you mean, could I go down these individually? I am not clear.

Q. Yes, sir. Would you say that—

A. The product line was good; technical manufacturing was good; performance good; plant location I wouldn't say was so good. The rest would be good. That would be the only thing I would say—

Q. As a result of your own studies and as a result of the work that Ebasco did for you, would you say that any other independent wire and cable manufacturer would have ranked any better than Rome?

A. No, I don't think so.

Q. In other words, it would be fair to say that in your view the Rome was about the best acquisition Alcoa could have made for the purpose it had in mind?

[fol. 2106] A. I think it would be as good as any, yes.

Q. Now, sir, you listed six companies which were more or less the final selection.

A. Yes.

Q. Following the failure of the '57 negotiations with Rome.

A. Yes.

Q. You listed Okonite, Simplex, Triangle, Walker Brothers and Crescent. That is Crescent Insulated Wire and Cable Company; isn't it?

A. Yes.

Q. Were any of these companies approached by Alcoa or by Ebasco?

A. Directly?

Q. Yes.

A. Well, I can answer, by Alcoa directly, no. I have to think a little about Ebasco directly. I don't think any of them were approached directly. I don't think that—no, I don't think they were approached directly.

Q. By directly, do you mean approached by Ebasco Company?

A. By an Ebasco representative going to the company.
[fol. 2107] Q. What about the Okonite Company? Was that high on your list?

A. Yes.

Q. What happened to your attempts to acquire Okonite, if you made such?

A. To acquire Okonite?

Q. Yes.

A. Well, I think we were really sort of getting the run-around and it took us a while to realize it.

Q. Isn't it a fact, sir, they were acquired by somebody else before you could acquire them?

A. Yes, but we did not know that at this time, although there were rumors floating around about not only Okonite but others, but—

Q. Who acquired Okonite?

A. Beg pardon?

Q. Who acquired Okonite Company?

A. Kennecott.

Q. Kennecott Copper Corporation?

A. Right.

[fol. 2108] Q. Now, Mr. Davies, you testified about Alcoa's alternate plan, if it could not make an acquisition?

A. Yes.

Q. To go it alone or get into the field on its own. Now, with respect to these plans, can you state generally what Alcoa's intent was? Was it intending to make a full line of copper products, a limited line of copper products; just what did it have in mind?

A. What we had in mind was that a considerable diversification and sufficient diversification so that we would be in a competitive position, and we had been in a non-competitive position for quite a long while. We also had in mind the fact that if we could establish this broader line of diversification, both aluminum and copper, that we hopefully

thought that being in that position we could increase the use of aluminum in the broad field.

Q. What you had in mind, then, sir, was substantially a full coverage of the wire and cable field, insulated wire and cable field?

A. Well, when you say "full coverage," I don't think we could have gone full coverage. I mean there are some things that maybe we would have to grow into. In other words, [fol. 2109] let's say some specific product. Maybe we wouldn't go into that. But quite a broad line. I am not technical enough to distinguish between various kinds of cables and wires and so on.

Q. Perhaps we can get into it this way. Was it your plan to manufacture building wire?

A. Yes.

Q. Communications wire?

A. Yes, I would say yes to that.

Q. Generally a pretty broad line although you are not sure of it?

A. I would say a pretty broad line, yes. We would have to get into a broad line to be competitive in the industry.

Q. Now, what stage were these plans in at the time of the acquisition of Rome? How far along were they?

A. The plans for our expansion on our own?

Q. Yes, sir.

A. Oh, they were in the—say a preliminary stage.

Q. Would you describe it as the survey stage?

A. Well, yes, maybe a little beyond that. I mean, to the standpoint of trying to estimate what would be required and what it would cost. Certainly what it would cost is a [fol. 2110] very important factor to be determined.

Q. Who within the company suggested this initially, if there was anyone individually?

A. Suggested this further study?

Q. Yes, sir.

A. Well, I heard Mr. Magee say yesterday that he was kind of impatient with me. I guess it was he.

Q. You testified that if it had been entirely up to you you think you would have recommended not proceeding at this point?

A. Yes, I did.

Q. Did you have any idea what Mr. Magee's views were on that?

Mr. Bergson: I think you should have asked Mr. Magee that when he was here yesterday.

The Court: Well, we let a lot of stuff get into this already so we will let Mr. Davies give us what Mr. Magee's idea was.

Mr. Mahaffie: If he knows, your Honor.

The Court: You asked if he had any idea what Mr. Magee's views were.

A. I think if I had been he, I would have had a tough job [fol. 2111] selling him on that. And that was cash, thirty-five to forty million cash, and a long period of time. I think it would have taken a lot of selling on him. It would on me.

Q. You actually spent about what for Rome Cable Corporation? Between twenty-five and thirty million?

A. Yes. I kind of forget the—you see, this is various times and places and stock.

Q. Yes. We worked out a stock range, the total price range between twenty-seven million and forty-one million over a period of a full year. Does that sound right to you?

Mr. Bergson: I think that price range, your Honor, is kind of ridiculous. It is the price at the time of the transfer and not what it might have been during the next succeeding eleven months. Although I do think that Mr. Fraser testified that the price was about thirty-three million dollars.

Mr. Mahaffie: All right. I will back down on that.

Q. Does the figure of thirty-three million dollars sound right to you?

[fol. 2112] A. Are you asking me the question?

Q. Yes. Does the figure, thirty-three million dollars, sound about right to you?

A. Yes. I think that is substantially correct. The value of the common stock at that time.

Mr. Mahaffie: Yes, sir. No further questions.

Redirect examination.

By Mr. Bergson:

Q. Just one question. You acquired Rome for the treasury stock of Alcoa?

A. That's right.

Q. And not cash?

A. Oh, no, not cash. It is quite a difference.

(Witness excused.)

Mr. Bergson: Mr. Reece.

[fol. 2113] KEMP W. REECE, called as a witness in behalf of the Defendants, being first duly sworn, testified as follows:

Direct examination.

By Mr. Bergson:

Q. Mr. Reece, will you please state your name and address?

A. Kemp W. Reece; 35 Stonehouse Road, Scarsdale, New York.

Q. By whom are you employed, Mr. Reece?

A. Ebasco Services, Incorporated.

Q. What is your position at Ebasco?

A. I am Executive Vice-President and a Director of the Company.

Q. How long have you been executive vice-president?

A. Since about the first part of 1956.

Q. And prior to that what was your position?

A. I was vice-president and a director in charge of engineering and construction for our company.

Q. For how long?

A. From 1952 to 1956.

Q. Now, Mr. Reece, what business is Ebasco Services, Inc. engaged in?

A. In management consulting services, engineering and [fol. 2114] construction for the utilities, electric and gas utilities, to industry and to governmental agencies.

Q. Now, Mr. Reece, directing your attention to the period in the early spring of 1958, did you have any meetings with any representatives of Alcoa?

A. Yes. In March, I believe the latter part of March, 1958, we had a meeting with Mr. Ralph Davies and Mr. Philip Coffin.

Q. And what was the purpose of that meeting?

A. Mr. Davies came in to talk with us about Alcoa's interest in getting into the insulated wire and cable field. He pointed out that in their opinion the insulated wire and cable segment of the utility industry had become of increasing importance and that Alcoa was not in this field and they were interested in getting, considering getting into it from the standpoint of their commercial position.

Q: Did you discuss with Mr. Davies and Mr. Coffin various ways by which Alcoa might get into the insulated wire and cable field?

A. Mr. Davies asked if we had any suggestions as to the methods or method which we thought might be most appropriate in getting into that field. We told him that in our [fol. 2115] opinion there were two methods that should be given major consideration.

One would be to set up a separate division, a new division of Alcoa, in which they would engage the necessary qualified and experienced personnel; probably set up necessary research facilities and the physical manufacturing facilities to manufacture insulated wire and cable.

We suggested that a second approach, which we felt was more, may well be more practical and less expensive, would be to acquire a company that was already established and well recognized in the insulated wire and cable field. While we had made no study and talking from our general opinion, offhand experience, that the cost to the company would probably be less on this basis and certainly the time element of getting into such business would be very much less. We, in discussing this matter, we told them we had had a little experience on our own in which we several years ago had decided to go into the industrial engineering and construction field. Our previous experience had been primarily in

electrical utility and heavy engineering and construction field; that we had found that it was quite difficult to obtain [fol. 2115a] the qualified people that you needed to get into such field, and that we were considering acquiring or attempting to acquire a company that was well established in that field, as our experience indicated that such a procedure would enable us to better service industry.

[fol. 2116] Q. Did you try to go with your own?

A. Yes, we did. We set up an industrial and engineering department which was, I would say, reasonably successful, but we did not get the complete coverage of industry that we were seeking to get—in other words, to provide a broader range of services than we had actually developed.

Q. And did you ultimately acquire a company?

A. Yes, we did.

Q. Now, did you at the time indicate to them how long you thought it might be or how long you thought it might take for them to get into the wire, insulated wire and cable business if they proceeded on their own?

A. No, I don't recall that we did.

Q. Now, what ensued as a result of that meeting?

A. We were authorized in April, early April, 1958 by Mr. Davies to assist them in locating a company in the insulated wire and cable field that would meet certain general specifications that he gave us at the time. Those specifications were that the company should be an established, going organization, well accepted in the field, a company that was serving [fol. 2117] the electric utility industry; a company that had well engineered products and products that were of high quality and so recognized in the industry, and a company who had seasoned and experienced management and a management that would fit in well with the Alcoa organization. I believe the word they used would be an organization that would be compatible with Alcoa.

Q. Did he indicate to you whether Alcoa was interested in acquiring more than one company?

A. Oh, no. They were interested in acquiring the know-how, really the know-how in the insulated wire and cable field, and there was no indication ever that they were interested in other than one company that was established in this field.

Q. Did he tell you that they had previous negotiations with Rome Cable that had been unsuccessful?

A. Yes. He mentioned that they had had discussions and, I believe, negotiations and that at the time he was talking with us they had decided the figure Rome was insisting upon was too high and that they wanted to explore other companies in the insulated wire and cable field.

[fol 2118] Q. Now, did you proceed with an exploration as a result of this meeting and the confirmation thereof that you just mentioned?

A. Yes, we started this exploration quite promptly.

Q. And generally, what did you do?

A. Well, this work was assigned to our people who were experienced in this field, and we compiled a list of quite a large number of companies in the insulated wire and cable field. In fact, I believe we tried to put together as near a complete list as we could of companies that were in this field of manufacture. After putting those companies together and getting preliminary information, we reduced the number of companies down to considerably less than the total to review with Alcoa.

Q. Do you have any recollection as to what the number was reduced to?

A. I believe it was 28.

Q. Now, after you selected these 28 companies, did you meet again with the Alcoa people?

A. Yes, our people met with the Alcoa people.

Q. And as a result of that meeting, what transpired?

[fol. 2119] A. It was decided that we would explore in more detail the availability of six of these companies, not only the availability but first the extent to which they met the specifications which Alcoa was interested in.

Q. And those six companies, are they the six companies that Mr. Davies referred to in his testimony this morning?

A. I am sure they were.

Q. Did you pursue the exploration of those six companies?

A. Yes. Our people checked into these companies rather completely through various sources, and Alcoa was kept advised of the developments.

Q. What was the ultimate result?

A. The ultimate result was that none of these companies were available or interested in merging or acquisition.

Q. Now, subsequent to that time did Alcoa advise you that it was resuming negotiations with Rome Cable?

A. Yes. Some of our people that were handling this work directly were advised by Alcoa that they were going to resume their discussions with Rome.

[fol. 2120] Q. Did Ebasco participate in any way with those discussions with Rome?

A. They did not.

Q. So that your participation in this program ended when the last company was found to be unavailable?

A. Yes. With respect to exploring any of the other companies, I believe that Mr. Davies asked some of our people for some general ideas with respect to Rome. I believe that there was a memorandum prepared covering those comments. I am not familiar with the details.

Q. Do you know whether or not those comments were directed primarily to the price that Alcoa should pay for Rome if it acquired it?

A. I am not familiar with the details of that memorandum.

Mr. Bergson: No further questions.

Mr. Wertheimer: No cross-examination.

(Witness excused.)

Mr. Bergson: Mr. Hickman.

[fol. 2121] LEON E. HICKMAN, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination.

By Mr. Bergson:

Q. Mr. Hickman, will you please state your name and address?

A. Leon E. Hickman, 829 Osage Road, Pittsburgh, Pennsylvania.

Q. By whom are you employed, Mr. Hickman?

A. I am employed by the Aluminum Company of America.

Q. What is your position at the Aluminum Company?

A. I am an executive vice president.

Q. How long have you been executive vice president?

A. Since April, 1959.

Q. And how long have you been employed by the Aluminum Company?

A. Since April, 1951.

Q. And prior to—what was your position at the time of your employment?

A. I was elected vice president, counsel and a director in [fol. 2122] 1951.

Q. And you continued in that capacity until you became elected executive vice president?

A. Even a little longer after that. I remained as general counsel until February 1st, 1960.

Q. And you have been a director of Alcoa since '51?

A. Yes.

Q. Now, Mr. Hickman, in 1958 or 1959 did Alcoa have a merger program?

A. No, they did not.

Q. Alcoa did, in 1959, however, acquire Rome Cable Corporation?

A. They did, sir, under the circumstances that have been detailed by the preceding witnesses.

Q. But this was not part of any merger program?

A. No, quite the contrary. Alcoa has had no mergers or acquisitions over its entire history until this Rome matter came along.

Q. Now, after Alcoa acquired Rome, Alcoa subsequently acquired Rea Magnet Wire Company; is that correct?

A. Yes, sir. In January, 1960.

Q. Will you tell us how this came about?

[fol. 2123] A. This came about through a suggestion of Mr. Ross Fraser in the fall of 1959. He said that information had come to him that the Rea family of Fort Wayne, which controlled the Rea Magnet Wire Company, was considering selling to the company for family reasons, tax reasons and the like, and there had been some death of the senior member of the family, and it might possibly be on the market if we were interested in it. We knew—we, in Alcoa,

knew something about the Rea Magnet Wire Company. It was a fine company, somewhat smaller than Rome, engaged in an entirely different business, although a copper fabricating business. It was in the business of doing the wiring, largely or entirely in copper, for electrical machinery, transformers, coils, that sort of thing. There were no overlaps with Rome at all. It was in the small copper wire business in the electrical machinery field, whereas Rome was in the larger sizes and in the transmission of electricity, by and large.

There had been a basic change in Alcoa's position in the late 1950's in that more and more the aluminum business was becoming an end product business. Alcoa through the [fol. 2124] years had been largely in the wholesale aluminum business, selling to others who did the fabricating, but we were finding, as the other witnesses have detailed, that we were more and more handicapped by not having a fuller line of end product materials than we did. So we were interested in Mr. Fraser's suggestion that this company was on the market, and negotiations followed with them.

Q. And as a result of those negotiations, did you acquire Rea Magnet Wire?

A. Yes, sir.

[fol. 2125] Q. Now, Mr. Hickman, after you acquired Rome Cable in 1959, were any acquisitions of other wire and cable companies considered?

A. Aside from Rea?

Q. Aside from Rea.

A. Definitely not. And never have been.

Q. Now, I show you Government Exhibit 254, which is a letter from you to Mr. Magee, dated May 1, 1959, regarding the Narragansett Wire Company. Would you explain that situation?

A. After we arranged the merger with the Rome Cable Corporation apparently the word got around that our money was available to people who had companies to sell, and we had a good many suggestions made to us of other companies that were on the market, and this Narragansett Wire Company was one of them. As I recall it, our Boston district manager told us that the Narragansett Company had contacted him and said that they would be glad to sell out to us. I was new to this business. I had a natural curiosity as to

who this Narragansett Company was and also what the impact on the industry of that company changing hands might be. And I asked Mr. Fraser to tell me something about this company on the assumption that he in Rome [fol. 2126] would know about it, it being in the wire and cable industry, and he reported to me on it, as this letter indicates. And I replied to Mr. Palmer that we had no interest. But this, as a matter of fact, was just informing myself. At no time did either the people in Rome or the people in Alcoa entertain any thought of acting on the suggestion that this company might be purchased.

Q. Did the possibility that Alcoa might be sued by the Government for acquiring Rome Cable Corporation have anything to do with your decision not to go forward with the Narragansett acquisition?

A. Not the slightest. We found the girl. We were satisfied.

Q. Now, I show you Government Exhibit 265, which is a letter dated April 13, 1960, from Mr. Fraser to you regarding the Hitemp Company and ask you if you could tell us the circumstance surrounding the writing of that letter?

A. This Hitemp situation, that is H-i-t-e-m-p, was basically another one of the same sort of thing. A man by the name of Everstat told one of our officials that this company could be purchased, and the matter was referred to me because I am the Alcoa contact with Rome, and I followed the same procedure. I asked Ross Fraser to tell me a little about the Hitemp Company and in due course he investigated and told me about it. We turned the matter down. Mr. Fraser does make the observation in here, "In view of the fact we had been sued two weeks previous by the Department of Justice, it was obvious we couldn't consider the matter." But I am sure it was just as obvious to me, and I assume to Mr. Fraser, that it wouldn't be considered in any event. Because, as stated by the previous witness, Alcoa was seeking know how in this insulated wire business and we were satisfied Rome had it and we were not about to buy it twice.

Q. Now, I show you a series of documents, Government's Exhibits 261, 264 and 266, all of which relate to the Supre-

nant Manufacturing Company and ask you to tell us the circumstances surrounding those letters.

A. Upon a reading of these letter I find that the possibility of buying this Suprenant, that is S-u-p-r-e-n-a-n-t, was the one that was brought to our attention by Mr. Palmer, the manager of our Boston District Sales Office. And those [fol. 2128] things as a matter of routine in Pittsburgh were funneled to me by this time—and, as I say, there were a good many of them—and I followed the same procedure with them at this time. I wrote to both Mr. Fraser and Mr. Rea, of the Rea Magnet Wire Company, which we had then acquired, not knowing what field this Suprenant Company was in, and I asked each of them to let me know whether there was anything of interest in this company and said we should not give consideration to the matter before or unless one or both of you strongly urges to do so, even though legal conditions may be a complete consideration.

We, in Pittsburgh, had not the slightest interest and neither did the people in Rome or Rea, and we turned it down.

Q. And was this turned down primarily for business reasons and not because of the pendency of the lawsuit?

A. No. I would have to be perfectly candid in saying that we wouldn't be about to buy a company in the cable and wire business two weeks after the Justice Department sued us for acquiring Rome. On the other hand, quite apart from [fol. 2129] the lawsuit, we never had the slightest interest and wouldn't have the slightest interest if there had not been a lawsuit.

Mr. Bergson: Your witness.

Mr. Melchior: No cross-examination.

(Witness excused.)

The Court: We will recess until two o'clock.

(Whereupon, at 12:40 p. m. o'clock, an adjournment was taken to 2:00 o'clock p. m. of the same day.)

2:10 p.m.

APPEARANCES: As before.

The Court: All right.

Mr. Adler: Theodore Kerry.

THEODORE H. KERRY, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination.

By Mr. Adler:

Q. Will you state your full name for the record, please?

A. Theodore H. Kerry.

Q. By whom are you employed?

A. The Aluminum Company of America.

Q. How long have you been employed by Alcoa?

A. Since 1941.

Q. What have your positions been with Alcoa since the time of your employment?

A. I was employed at our Massena plant in the accounting department in 1941. I transferred to a plant in Newark, Ohio in 1943 to become chief cost accountant of that plant. That was an Alcoa plant built for the government—Defense [fol. 2131] Plant Corporation. In 1944 I came to the Pittsburgh office as a staff accountant with specific responsibilities for wire, rod and cable cost accounting. In 1954 I became chief cost accountant of Alcoa. In 1956 I became administrative assistant, comptroller's division, and shared general comptrollership responsibilities with two other people; but specifically under my administration were several divisions, including the cost accounting division. I still hold that position, although in 1960 I added to my specific responsibilities the administration of Alcoa's budget program, and at that time the cost accounting function was transferred to another individual.

Q. All right. Have you been active in professional associations in the field of accounting?

A. I belong to the Comptrollers' Institute of America, and for about ten years, up until this fall, I was a member of the National Association of Accountants. I have never held any offices in those associations, but I have on various occasions been called upon to address these groups and other technical accounting groups on cost accounting practices.

[fol. 2132] Q. Could you describe for the Court the operation and function of Alcoa's cost accounting division?

A. Yes, of course, the primary responsibility of any cost accounting division, including ours, is to maintain adequate costs of its various products and product lines. In addition to that it is a part of our function to provide the sales management with data regarding the cost of the various products, mark-up factors which would account for overhead costs and which would return what the management deems is a desirable return on investment and thereby provide target sales prices for the various products involved.

Q. Is this in accord with accepted accounting practice in your judgment and experience?

A. This very definitely is in accord with the generally accepted responsibilities of the comptroller or comptroller-ship function. There may be many corporations where a part of this may be performed by some other division other than cost accounting, but it is part of the comptrollership responsibility.

Q. Now, referring to the development of possible target [fol. 2133] sales prices, did Alcoa face any special problem in this regard by virtue of the fact that it was an integrated producer—that is, because it produced both raw materials and intermediate products and finished products?

A. Oh, yes. For years we have had the problem of selling ingot or intermediate products to customers who were also competitors in the sale of the finished product. In these cases it has been our duty to provide the management of our company with data which would not only develop the target price for the products based on a desirable return, but also provide the management of our company with the situation that, to the best of our belief, would be the situation of a competitor who had to purchase an intermediate product at one of our prices, and then would have to sell that product or sell the finished product again at one of our prices, so it

has been definitely a part of our function to provide also, along with the target price, a picture of the profitability to the best of our ability to derive such a thing available to the customer-competitor.

Q. Could you describe briefly the type of or types of calculations [fol. 2134] that you might make with respect to aluminum cable?

A. You mean describe the type of build-up that we would give with respect to cable?

Q. Yes.

A. Yes. We would—you see, we determine the actual cost of producing each item that we sell of cable. It is our practice to start with the market price of the ingot. This is transferred from our smelting division to our fabricating division at market price. Starting from that point, we would add the actual cost of producing the cable. We would add an allocation of our overhead expenses. We would add a mark-up factor which was based upon the invested capital, desired return on the invested capital in producing this cable—that is, the facilities—and thereby arrive at what is known in our company as a target price for the product.

[fol. 2135] Q. Now, was any additional problem presented because certain manufacturers start with redraw rod, purchase redraw rod, from which they make cable?

A. Yes. This is another one such as I mentioned a while ago. Customers start with ingot and customers also start with redraw rod. So in this case our sales department also wants to know; and we provide them with a similar cost build-up, such as I have described, excepting in this case we would start with the sales price of the redraw rod, the price which we would be selling it at to this customer-competitor, would go through the same process, assuming for lack of any other better way of assuming that competitor-customer had the same cost of producing the cable that we did.

Q. Do you assume this to be a valid assumption, that is the assumption that the non-integrated fabricator cost would be similar to yours?

A. Yes, I have to assume that. I wouldn't want to assume that we were less efficient. I don't believe I would want to assume the reverse either.

Q. Now, if in fact it were possible to achieve a sales price equivalent or close to the target price, is it your judgment [fol. 2136] that this would leave an adequate margin of profit for the non-integrated producer?

A. When you say if it were possible to sell at a price at or close to the target price.

Q. Yes.

A. Yes, sir.

Q. Now, Mr. Kerry, when the cost accounting division makes analysis of this type and develops information as to what an appropriate target price might be, how is such information transmitted to the sales department?

A. If this were a complete price revision of a whole line, it would have to be presented in tabular form. That is a schedule table. There may be cases where it may be transmitted in internal correspondence form, and in cases where you talk about one selected subject I have even known it to be transmitted verbally.

Q. Now, what has been done, what does the sales department do with this information?

A. They use this as a guiding line which will hold in front of them the desired target on where we would like to be. They also use, in the case that I mentioned, where we reconstruct the competitor-customer situation would be, they use this as a guide line to be sure that we do not on our own evaluation affect any price which would put the customer-competitor in an impossible situation.

Q. Is it at all times, so far as you are familiar, been Alcoa's policy to preserve an adequate spread for your customer-competitor in so far as this would be possible to do?

A. This has always been our policy.

Q. Have you yourself participated with sales department personnel in discussions you got in the establishment of actual sales prices?

A. Yes, I have participated in these discussions, particularly since becoming chief cost accountant and thereafter.

Q. Now, what has in fact been the ability of Alcoa and its sales department to realize a price commensurate with or approaching the target price developed in the cost accounting division since the period of shortly after the Korean War?

A. Increasing difficulty to the point where at least since 1957 I would say practically entirely impossible.

The Court: That is because of competition?
[fol. 2138] The Witness: Yes, sir. Yes, sir.

Q. Is that true with respect to aluminum cable as well as other products?

A. Yes. In recent years I think I can properly say most particularly true in the case of aluminum cable.

Q. I show you, Mr. Kerry, Government Exhibit GX-191 and ask you to look at that and to describe for the Court briefly what that document relates to.

A. This is dated in 1956. It relates to a meeting at which I had been present, one of the other members to whom this letter is addressed was Don Wilmot, at that time a vice-president of our sales department, and it relates to, during this conversation it was brought out, this was shortly after the Korean War, during the Korean War price controls had created a situation whereby our prices were definitely out of line, I would say at least out of line—during the Korean War price control had resulted in a situation whereby our prices were out of line with target and out of line with actual costs. So at this meeting I was asked to develop a schedule, a rough target price, whereby we knew that we netted a half [fol. 2139] a cent a pound increase on E.C. pig, as it was known then,—ingot it is called today—we knew that our cable prices were out of line.

I was also told that at that time we had to watch the redraw rod price because in recent years customers and also competitors by the use of Properzi Equipment had installed this new equipment, were buying ingot from us and in some cases were selling a redraw rod. Therefore, we could not blindly adjust the price of cable or the price of E.C. pig without again watching the spread situation. So I was asked to develop a recommendation as to what would be the theoretical pricing situation which would rectify our need for price revisions and would retain a spread situation somewhat on a historical basis which would permit, which would prohibit any possibility of a squeeze—I have to use the word—of a squeeze to either of these competitors of ours, the ones buying ingot and making rod or the ones buying rod and making cable.

Q. Mr. Kerry, why was an increase needed in the E.C. pig?

A. That is a matter—E.C. pig has closer operating limits. [fol. 2140] There is a closer control needed of the varied ingredients other than aluminum. This closer control, this happens in other alloys of ingot too, this closer control costs us money. I would like to say here that we cannot, no cost accountant can precisely account for this nature of cost as exactly how much it is. We know it requires more supervision, more metallurgical work. We know there has to be, of course, some price differential.

Q. And the same thing is true, I think you stated, with respect to other alloys or types or forms of aluminum product?

A. This is true in certain other alloys of pig, that is correct.

Q. Now, I believe in your testimony you stated that one factor, that the cost accounting division had to bear in mind in readjusting these prices was that an adequate spread be maintained, at least as a theoretical matter between the pig price on the one hand and the redraw rod on the other.

Now, in this memorandum you also state that the pattern of price-increase suggested by you, "would return approximately what is needed without unduly opening the spread [fol. 2141] between redraw rod and cable." In other words, you appeared also to be concerned that there not be too wide a spread between the rod on the one hand and the cable on the other. Would you explain the basis of your concern in that regard?

A. You must remember that my function is to make the sales department and the management aware of the possible economical impact of any alternative decision which might be made. You also must remember that since I have three prices to be concerned with here, pig, redraw rod and cable, if the spread on the one opens, the spread on the other obviously closes. We have customers at both stages. So I am simply reporting to the sales department, as I was asked to do, here was the theoretical desirable situation which would return in the aggregate to Alcoa what we needed and would also leave all customers at any stage of the game with the relatively same spread which they had as far as I know successfully operated in recent years.

Q. Now, were the recommendations that you, on behalf of the cost accounting division, proposed in this document put into effect by the sales department?

A. These particular recommended increases were not put into effect in their entirety.

[fol. 2142] Q. Do you recall what was attempted at that time?

A. Yes, I do. The half cent increase on ECP was put into effect. If you will refresh my memory, what did I recommend on EC redraw rod on that letter? It is hard to read.

Q. Yes. I believe that was .014, I believe. I think you had better look at it.

A. Yes. This letter recommended .014 on redraw rod and my recollection is at about that time we increased redraw rod by one cent. My recommendation for cable was an average—and understand, there are many specifications, and this is only an overall average of many—I recommended an average of .018, and my recollection is that the effective average of everything which was done about that time was .015.

Q. Now, Mr. Kerry, in your judgment does the fact that Alcoa, through its cost accounting division, has attempted to analyze relationships between raw materials and finished product prices and has attempted to determine adequacy of spreads between such prices mean that Alcoa has had the power to determine what such spread might be?

[fol. 2143] A. Absolutely not. It is good practice. It is good practice, and I believe essential in good management, that we know where we would like to be and where our customers and competitors are or should be; but we have had absolutely no power to accomplish these things.

Mr. Adler: No further questions.

Cross-examination.

By Mr. Mahaffie:

Q. Mr. Kerry, just to straighten out a couple of things on this document, GX-191. Will you read, Mr. Kerry, the third paragraph on the first page—that is, the last paragraph on the first page which finished up over on page two

and then read the first sentence of the first full paragraph on page two.

A. Yes. First, let me say I have a very difficult copy to read, but I will try it. It is very difficult print. (Reading) "It seems to me that the significant point in this is that our present need for price increases in cable is occasioned by changes in our own facilities and operating practices. Since [fol. 2144] our competitors have not necessarily had parallel circumstances, we should be aware of the fact that any price increase at this time, although needed by Alcoa, may increase the margin available to a competitor to a point beyond that which has ever been available to him since 1948. This, of course, can be eliminated insofar as non-integrated competitors are concerned by making a corresponding price increase in redraw rod."

Q. Now, you testified it was Alcoa's policy, as exemplified by this document, in setting the prices of these two products to maintain the historical spread. I believe you used the word "historical", did you not?

A. I believe I did.

Q. That is, to maintain the spread which had previously been available to a non-integrated competitor?

A. I don't know if I made exactly that statement.

Q. Is that correct, sir?

A. If you will pardon me by saying as long as that spread is adequate, as long as that spread will result in the customer-competitor not having a loss, then I will agree with [fol. 2145] it, but I want to put that qualification in because, under some conceivable circumstance, if the historical spread, due to no power of ours, resulted in a loss situation, we wouldn't want to retain that historical spread any longer than we had to.

Q. Would it be correct that the purport of this language that you just read would be that you wanted to maintain that spread, you didn't want that spread to get too narrow and at the same time you didn't want the spread to get too big?

A. You must remember my position.

Q. Yes.

A. As an accountant, I am making my management aware of the economic impact of any alternative action, and in this I am doing just that. Since I know that we had cost increases due to an expansion program and certain circumstances that might not be existent in the case of competitors, it is incumbent upon me to make my management aware of the fact that an increase at this time may well widen the spread for the competitor. I don't know if this is good or bad, but I must make my management aware of this.

Q. Mr. Kerry, you testified to your knowledge it was [fol. 2146] Alcoa's policy, the policy of the sales department, to maintain what you described, I believe, as an adequate spread.

A. Correct.

Q. To competitors. Now, I ask now if you know, was it the policy of the sales department to make sure that this spread was neither too big nor too small?

A. I know that it was the sales department's policy to make sure that the spread was not too small because these are our customers. I do not know how I could even define what is too big a spread.

Q. I see. But that would be the only use to which this information which you read could be put; is it not, sir?

A. I was making the sales department aware, not that it was too big; I was making the sales department aware that it was possible that this would increase it. They must then use their judgment.

Mr. Mahaffie: No further questions.

Mr. Adler: No redirect.

(Witness excused.)

Mr. Adler: Mr. Gilbert.

[fol. 2147] THOMAS L. GILBERT, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination.

By Mr. Adler:

Q. Would you state your full name, please?

A. Thomas L. Gilbert.

Q. By whom are you employed?

A. By the Aluminum Company of America.

Q. What is your present position?

A. I am a production assistant in the office of the general manager of the fabricating division.

Q. And how long have you held that position?

A. I have held that for one year and a half.

Q. Do you recall the date?

A. September 1st, 1960.

Q. What was your position prior to that?

A. Prior to that I was superintendent of the covered conductor department at the Massena plant.

Q. And what was the period covered by your employment in that capacity?

A. From 19— about mid 1956 until September 1st of 1960.

Q. And what were your responsibilities in that position?

[fol. 2148] A. The operation of this production department to cover and insulate aluminum cable to end up with products known as line wire and self-supporting service drop or multiplex cable.

Q. Now, prior to 1956 what was your position?

A. I was the superintendent of the cable accessory manufacture department in Massena.

Q. For what period?

A. From, I believe it was, early 1953 to mid 1956.

Q. Now, while you were superintendent of cable accessory manufacture, did you have other duties?

A. Yes, sir, I did. For a period I was assigned—I was given a special assignment as a liaison man to operate between Rome Cable and the Massena plant, and that assignment was in effect to solve any of the small problems that

naturally arose from trying to make the efforts of two different companies work smoothly in this tolling arrangement that has been testified to.

Q. Well, did you have a further responsibility with respect to wire and cable while you were in this position of [fol. 2149] superintendent of cable accessories manufacture?

A. Yes, sir. Following the liaison assignment, there was a period after our management decided to proceed with installation of facilities for the production of polyethylene covered line wire and service drop. I was given the responsibility of coordinating engineering efforts to choose equipment and install this equipment for the polyethylene covering and allied operations. This, of course, extended from about mid 1955 until I was assigned as the superintendent of that covered conductor department in early or mid '56.

Q. Now, we have heard testimony this morning from Mr. Davies regarding the installation of this polyethylene covering facility at Massena. What products were manufactured on that equipment that had formerly been made under the tolling arrangement at Rome?

A. Primarily two types of overhead conductor. Number one was line wire and number two was the twisted multiplex cables.

Q. With the polyethylene?

A. With the polyethylene covering and insulation, yes.

[fol. 2150] Q. Now, when this polyethylene facility was installed at Massena, were you any longer dependent upon Rome for the manufacture of the products you just described?

A. Naturally, in any new operation there is a period of breaking in and actually learning how to operate that equipment. Subsequent to this break-in period we were in a position to fabricate all our requirements for the polyethylene line wire and multiplex cables. So that we no longer needed, after this break-in period, to depend upon the tolling arrangement of Rome Cable to supply us with the polyethylene items.

[fol. 2151] Q. Now, at a subsequent date did you participate in formulating the request for authorization of funds for the installation of Neoprene covering equipment?

A. Yes.

Q. Now, with respect to this neoprene equipment, in what manner was it contemplated that Alcoa would receive the neoprene itself?

A. The neoprene was to have been purchased outside of the company in a pre-compounded state, which would then allow us to add this neoprene compound directly to our proposed neoprene extruder to put on the covering or insulation.

Q. Why did you not plan to do the compounding yourself?

A. Because we did not feel that it was necessary to purchase the equipment that would be required for compounding the neoprene.

Q. Did the products that you planned to make require any variation in the type of compound or type of neoprene covering that you might require?

A. No. We were convinced that the compounds required for these neoprene products we are speaking of were relatively simple and easy to exercise quality control over so that we felt we did not need to have the compounding [fol. 2152] facilities ourselves. In other words, the compounds necessary were rather standard and available from outside suppliers.

Q. Now, in your judgment if a neoprene extruding facility had been installed at Massena, would that have satisfied your requirements or would you have needed Rome to continue tolling part of your requirements?

A. We would have been able to supply practically all of the line wire items that we needed, and we would have been able to supply all of the multiplex neoprene products that we would have needed.

Q. Had this installation been made, in your opinion, would there have been any need for Alcoa to acquire Rome in order to give you greater polyethylene and neoprene capacity for the line wire and triplex products about which you speak?

A. Absolutely not.

Q. Now, I refer to certain of the product boards over here which you have examined, in particular the board entitled "Primary distribution-underground, and secondary distribution-underground;" the board entitled "Utilization," and the board entitled "Other representative Rome products,"

[fol. 2153] photographic copies of which have been introduced into evidence as Defendants' Exhibits AR-16, 17, and 18, respectively. Would you at Massena have been able to manufacture the line of products shown on those boards with the equipment about which we have been talking?

A. If there were any items amongst that group that we could have manufactured with our equipment we did not know which ones they were. I can say that we did not think that we would be able to fabricate the line of product shown on the boards that you indicated.

Q. I refer you to Government's Exhibit GX-155, which is the proposed R/A, and refer to the statement therein that "If the neoprene extruding equipment were installed we would be able to produce rubber insulated high voltage cables if required."

Mr. Mahaffie: What page are you referring to, Counselor?

Mr. Adler: Page 2.

The Court: What is that number again?

Mr. Adler: GX-155.

Q. And I ask you to comment about that.

[fol. 2154] A. At the time we felt we would have had a basic extruder for neoprene that could also extrude rubber insulation. Being rather naive and new to the insulating game, we felt that we could make this material, which as I look back now and having learned more of, a little more about the insulation field, I feel certain that we would have been unable to do it for reasons such as the fact that we did not have the high voltage electrical equipment for testing purposes, which test would have been required. Nor did we, I believe, appreciate the extreme soundness that was required in the high voltage insulations. We would have had no way of checking whether we had ample insulation or not.

Q. Now, was a committee formed at some time to investigate the feasibility of Alcoa's establishing its own facilities for the manufacture of a line of products including the sophisticated types shown on those product boards.

A. Yes, sir. I was assigned to such a group in November of 1958.

Q. And what was your role in the activities of the Committee?

[fol. 2155] A. I was one of the junior members of the committee and the person that was assigned full time to this survey to determine what we would need in order to get into the production of this sophisticated array of insulated conductors that you referred to.

Q. What did you conceive the Committee's function to be in that regard?

A. The function would have been to investigate equipment necessary for this production; investigate the best plant site for production and thus closest to markets; and to determine naturally the building space that would be necessary and also to what extent we would have to rely upon the acquisition of technical know how from outside the company.

Q. Had anyone on your committee had actual experience in making these more sophisticated insulated products?

A. No.

Q. Had anyone on the committee had experience with the equipment used in making such products?

A. Other than my having seen them in various visits to insulating plants, I know of no one in the group that was familiar with the equipment necessary.

[fol. 2156] Q. Now, how did the Committee go about determining what products might be manufactured in such a facility?

A. Of course, we were limited in our direction by excluding magnet wire from our considerations and also from high voltage cable. That left the rest of the field open to our investigation, and we did our best to determine what those individual products would be by reviewing the catalogs that are published by some of the companies who also were into the manufacture of these products. It was a matter of judgment on our part to pick what we thought would be the popular items that we would be required to make in such a manufacturing set-up.

Q. Could you tell from examining the catalogs of producers the relative importance of various products or what relative quantities that you might be required to manufacture of each product?

A. No, sir. That was one of our very thorny problems in trying to determine what the needs of the different types of cables would be and in what proportion of volume they would be with respect to one another.

[fol. 2157] Q. Did you yourself consider some kind of research staff in organization to be necessary if you were going to get into the sophisticated type of insulated products?

A. Other than realizing that such research facilities would be required, we took no steps to determine what those facilities would have to be. We were not, in other words, the research investigation was not assigned to our group.

Q. You were limited to production facilities?

A. We were limited to production considerations, yes.

Q. Now, in the course of your committee's work, did you draw up any possible layouts of plants?

A. Yes, sir, we did.

Q. Were these considered to be an actual plan of a plant that would be built?

A. This was our best effort to put on paper what we considered necessary to produce a range of products really at which we were trying to cast our business. I do know, though, with such a setup would be a practical setup to cover the manufacture of this sophisticated line. It was a very preliminary look, possibly as a place to start from, with a more detailed study.

[fol. 2158] Q. Did your committee come up with an estimated total cost of facilities of the type you were—

A. (Interrupting) Yes.

Q. (Continuing)—talking about?

A. Yes, we did, and that amount was thirty-eight million dollars.

Q. Now, if we may, Mr. Gilbert, return to the present, would you state your responsibilities in your present position?

A. I now have to do with representing the general manager in the fabricating division in problems that have to do with products such as alloy wire, rod, bare structural shapes, electrical conductors, aluminum extrusions and aluminum drawn tube.

Q. Would aluminum conduit come within your field of responsibility?

A. Yes, sir, aluminum conduit is one of the products.

Q. Could you describe for the Court the equipment, well, the equipment needed to make aluminum conduit?

A. It depends, of course, what you consider the raw material. I would start, if the Court please, with an extrusion ingot, which is a cast aluminum ingot. That ingot is charted into the aluminum extruder which works somewhat like a [fol. 2159] toothpaste tube where you apply pressure and squirt out the extrusion, which in this case would be the pipe of the size we want to handle. Once that pipe is extruded, then it is sawed into lengths specified in the neighborhood of ten feet. Then those pieces of pipe are threaded on either end. Each piece of pipe is coated on the inside with a slip agent to allow insulated wires to be drawn through easily. One end of each pipe is fitted with a screw-on coupling. The other end is covered with a protector or some kind so the threads don't get banged up. And then after suitable labels are stuck on the outside of the pipe, a number of pieces of particular size are tied together and sent to our shipping docks.

Q. I show you Defendants' Exhibit AR-70, and ask you to state the number of producers of extruded shapes and drawn tube shown on that report.

A. 1950 there were 39 such producers. In 1955 110 and in 1960, 133.

Q. Mr. Gilbert, would you expect such producers to have the extrusion press about which you spoke, which you mentioned as one element of equipment needed in the manufacture of aluminum conduit?

[fol. 2160] A. Yes, sir, I would. With this one qualification, that the size of the extruder items, the size of pipe that can be produced. That of the 133 extruders I would suspect they could all extrude the more popular sizes of aluminum conduit.

Q. Now, what would your estimate be as to the cost of equipment needed for threading, labeling, lubricating pipe in order to make a good conduit? In other words, to go from the step where you have the extruded pipe to the point where you have a finished conduit?

A. I would think the figure of \$15,000 would be probably more than ample to set up for such a fabricating operation. [fol. 2161] The Court: I am just curious, Mr. Gilbert, about that extruding machine. I am not going to buy one. When the ingot, if you call it that, is placed in the machine it is subjected to pressure of some kind?

The Witness: Yes; it is a heated ingot, subjected to hydraulic pressure.

The Court: And when the pipe comes off, does it have to be cooled somewhere along the line?

The Witness: Yes, sir. In case of conduit, it is air cooling.

The Court: Air cooled?

The Witness: Air cooled, yes. There are fans from underneath this run-out table that blow the air up and reduce the temperature down to where the metal is not easily scratched and also is then rigid enough to handle, to saw and handle.

The Court: So that when the ingot is placed in the machine, it is pretty hot or comes hot after it is placed in the [fol. 2162] machine?

The Witness: It is placed in the machine already hot, in the neighborhood of 800 degrees Fahrenheit.

The Court: All right. That is just for my own information.

By Mr. Adler: (Continuing)

Q. Now, having returned you to the present, if we can go back for a moment to the time when this request for authorization of funds for a neoprene extruder was prepared, was that request ever given final approval, to your knowledge?

A. No, sir, it was not. It was given approval at the plant level and then up through a committee, investigational committee, who recommended to management that it be approved; but management did never, to my knowledge, approve—I am sure they never approved it.

Mr. Adler: No further questions.

Cross-examination.

By Mr. Mahaffie:

Q. Mr. Gilbert, would you run down, just so we get this all together, just what equipment is required to take an [fol. 2163] extrusion ingot through all of its various stages to finished conduit? Now, you described what the processes are. What I would like now is what equipment is required.

A. We need a furnace to bring the ingot to this tempera-

ture of approximately 800 degrees Fahrenheit. There are conveyors, simple conveyors that carry the ingot from the furnace to the extrusion press. The extrusion press is hydraulically operated and I would say that the press is operated, and the ingot, the hot ingot is extruded out through an extrusion die and as it comes out it takes the form desired—in this case, a hollow tube or pipe. May I ask whether you wish me to go on further than that?

Q. Yes, sir. I want to go all the way to conduit.

A. All right. Then the extrusions are cooled, as I have already described, and they are then sawed to whatever length is specified in the manufacturing procedure. Those lengths of pipe are then put into threading—handled into a threading machine which threads first one end and the pipe is turned around and it threads the other end. There is also [fol. 2164] a machine operation which takes any sawing burr away from the end of the pieces of pipe so that you have a smooth end that will not injure any insulation on the cable that are subsequently pulled through.

Q. Is that a separate machine that does that, or is that done in the threading?

A. It can be either. It can be either the same or separate. The threaded pipe is then lubricated by blowing through the pipe a spray of a lubricant which then adheres to the inside of the pipe.

Q. Is that a separate machine that does that, Mr. Gilbert?

A. Again, it can be separate or it can be part of an automated line. To my knowledge, most people use separate machines, and I have seen just simple hand sprays that have air hoses leading to them to do this spraying.

Q. Mr. Gilbert, is the word "stretcher" familiar to you?

A. Yes, sir.

Q. What is a stretcher?

A. I omitted the stretcher in the extrusion line. After [fol. 2165] the hot pipe comes out of the extruder, it is gripped on either end by mechanical grips, and then the pipe is stretched which makes it straight. Thank you.

Q. Now, is that—does the cooling process take place at the same time it is being stretched, or is that a separate process?

A. It is down to temperatures low enough so that the

stretching will take effect and end up with a straightened pipe.

Q. I believe you said it was air cooled. How is that done, sir? Is it done in racks? Is it cooled as it comes out of the extruder?

A. It is cooled as this piece of pipe travels down along conveyor or run-out table from the extrusion press.

Q. You have a run-out table which accomplishes the cooling?

A. Yes.

Q. And your stretcher picks it up?

A. Men pick it up and put it in the stretcher jaws, and it is stretched.

Q. Now, sir, directing your attention to document AR-70, Mr. Gilbert, the category which you noted on your direct [fol. 2166] testimony is labeled extruded shapes and drawn tube. Now, I ask what "drawn tube" is, Mr. Gilbert.

A. Drawn tube is cold worked tubing. In the aluminum industry you generally start out with an extruded tube bloom or thick walled pipe, actually. That thick-walled pipe is put through a die, using an interior mandrel, and the result is a cold working and reducing of the wall, and usually the outside diameter of the tube bloom, to result in a drawn tube.

Q. Well, does the fact that this category says "drawn tube" mean that—well, strike that.

Does the fact that a manufacturer makes drawn tube necessarily mean that he owns an extruder?

A. In the aluminum industry I know of no way to get a drawn tube without having an extruded tube bloom to start with. It is very possible that a company could buy, purchase outside of its own facilities, tube blooms for their production of cold drawn tubing.

Q. And then he draws the tube on his own machine?

A. I would assume he would.

Q. So then the figure which is shown here in the third [fol. 2167] column under 1960 of 133 producers does not necessarily represent 133 companies which have extrusion presses in their plants?

A. I would agree.

Q. Now, Mr. Gilbert, Mr. Adler asked you about this neo-

prene project in 1957 and '58. I wonder, sir, if you would have another look at GX-155 and 156. What is—well, I think you testified GX-155 is the so-called R for A which, I believe, means request for authorization of funds to set up facilities for producing neoprene covered wire; is that correct, sir?

A. That's correct.

Q. And GX-156—well, will you state what that document is, sir, GX-156?

A. GX-156 is a record of these subjects that were discussed and passed upon in a capital expenditure committee meeting in January, 1959 on the 8th.

Q. And would you, without reading it—would you state what the subject matter of the last item on page one is, sir? It is labeled "Massena M-2520."

A. The subject is the neoprene extruding equipment which in turn is referred to under the R for A, GX-155.

[fol. 2168] Q. So GX-156 represents the action taken by the capital expenditure committee on the request for authorization which is contained in document GX-155?

A. Yes, sir.

Q. Now, sir, what amount of money was approved by the capital expenditure committee in connection with that request?

A. Well, it is my understanding that the capital expenditure committee does not approve expenditure of money. It merely recommends to management that this is a worthwhile project and they are recommending that management favorably look upon it.

Q. Well, Mr. Gilbert, would you read the paragraph at the top of the page, the three-line paragraph that precedes the individual items on GX-156.

A. "The following matters were discussed in the meeting noted above. Approval of all of the items noted below was recommended by the full capital expenditure committee."

Q. And one of those items is this M-2520?

[fol. 2169] A. Yes.

Q. The neoprene extruding equipment. And it states that that item involves the amount of \$475,000, does it not, sir?

A. Yes, sir.

Q. Now, Mr. Gilbert, turning to GX-155, I note there is—well, first of all, the request for authorization for this

neoprene extruding equipment is dated November 14, 1958, is it not, sir? That would be on the second page of the exhibit.

A. Yes, November 14, 1958.

Q. And the approval of the capital expenditure committee which we just referred to as dated January 13, 1959—am I correct, sir? I'm sorry, January 8th.

A. January 8th, yes, sir.

Q. Now, would you read the cover memorandum on GX-155, the memorandum dated July 27, 1959, from Mr. Little to Mr. Pellegrino, with a copy to you? What is the text of that memorandum, sir?

A. "Please cancel R for A, M-2520, purchase and install neoprene extruding equipment and rehabilitate the balance of Building 14 for occupancy."

Q. Is there a handwritten notation on that document? [fol. 2170] A. Yes, sir.

Q. What does it say?

A. "Dead duck."

Mr. Mahaffie: No further questions.

Redirect examination.

By Mr. Adler:

Q. Referring to AR-70, do you personally know of drawn tube manufacturers which purchase what you referred to as a tube bloom—I think that was it—from other manufacturers and begin their operations at that stage?

A. I know—I believe I know of instances where our extruding plants make limited amounts of tube bloom for sale, but they are to my knowledge always very large sizes which come from the very high capacity or large size extrusion presses of which we are operators, but I do not know of any orders that we get for tube blooms of sizes such as you would use for making conduit.

Q. Would it be your conclusion, then, that the large majority of the 133 producers listed on this report would have their own extrusion presses?

[fol. 2171] A. That is my opinion.

Mr. Adler: No further questions.

Mr. Mahaffie: No recross.

(Witness excused.)

Mr. Latimer: Mr. Pendorf.

JOHN S. PENDORF, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination.

By Mr. Latimer:

Q. Mr. Pendorf, would you state your full name for the record, please?

A. John S. Pendorf.

Q. By whom are you employed?

A. Rome Cable Corporation.

Q. And in what capacity?

A. I am a statistician, head of the statistical department.

Q. How long have you been employed by Rome Cable?

A. Twenty-four years.

Q. And how long have you been a statistician for Rome Cable?

[fol. 2172] A. Twenty-three.

Q. Mr. Pendorf, I show you a chart which has been marked for identification as defendant's AR-82 which is entitled "Public utilities purchasing covered or insulated overlap aluminum conductor from both Alcoa and Rome in 1958," and I ask you if you prepared that chart?

A. Yes, sir.

Q. And from where did you get the information to prepare that chart?

A. The information came from the defendant's answer to the plaintiff's interrogatories, 10 and 11.

Q. And where did the information come from or which the answers to the interrogatories were based?

A. They were tab reports from company records.

OFFERS IN EVIDENCE

Mr. Latimer: I will offer defendant's Exhibit AR-82.

Mr. Wertheimer: No objection.

The Court: Received.

(Defendant's Exhibit AR-82 for identification received in evidence.)

The Court: What is that chart again? I will take your description of it.

[fol. 2173] Mr. Latimer: I believe, your Honor, you have a copy of that in your chart notebook, the very last one. It is entitled "Public utilities purchasing covered or insulated overlap aluminum conductors from both Alcoa and Rome in 1958."

The Court: All right.

By Mr. Latimer:

Q. Mr. Pendorf, does that chart show all the companies which purchased the covered or insulated overlap aluminum conductor—and by that I mean the last two products on the product board, a photographic copy of which has been marked as defendant's Exhibit AR-20—does that cover all the companies who bought these products in 1958 from both Alcoa and Rome?

A. Yes, sir, they do.

Q. Now, could you state how many companies there are on this chart?

A. There are thirteen companies listed.

Q. And how many purchased \$1,000 or more from both Alcoa and Rome?

A. There are ten of these companies that purchased more than a thousand from each.

[fol. 2174] Q. Now, I am going to list the utility companies who have testified at the proceedings here, and I wish you would check off the ones who are among the ten who purchased one thousand dollars or more of the overlap products in 1958: Central Hudson Gas and Electric Company, Central Illinois Public Service Company, Dayton Power and Light Company, Long Island Lighting Company, New York State Electric and Gas Company, Niagara-

Mohawk Power Corporation, Public Service Electric and Gas, and Rochester Gas and Electric.

Would you state how many of the ten companies that purchased more than a thousand dollars of the overlap aluminum conductor from both Alcoa and Rome in 1958 appeared as witnesses in this proceeding?

A. I checked off eight.

[fol. 2175] Q. Well, could you count just one more?

A. I got Central Hudson; Central Illinois; Dayton—

Q. I am sorry. It is my mistake. Strike Rochester. Subtract one from the answer you gave.

A. I got seven.

Mr. Latimer: Seven. Thank you. No further questions.

Cross-examination.

By Mr. Wertheimer:

Q. Mr. Pendorf, this tabulation which you prepared does not include any products other than aluminum line wire or aluminum triplex that was sold to the utilities in 1958, is that correct?

A. These figures represent the sales of aluminum line wire and triplex.

Q. Nothing else?

A. That's right.

Q. So any sales by Rome of copper products would be excluded?

A. They are not in here; that's right.

Q. Sales by Alcoa or Rome of ACSR or AAC would be excluded?

A. That's right.

[fol. 2176] Q. And this would not cover sales by Alcoa or Rome of all insulated or covered aluminum conductors or wire and cable to these utilities in 1958?

A. That's right, it would not.

Q. And this tabulation does not list all companies to whom Alcoa or Rome sold the so-called overlap products in 1958, or the companies to whom Alcoa or Rome sold aluminum covered or insulated wire and cable in that year?

A. It is a long question.

Q. Shall I break it down?

A. I think you have got to give it to me in little, short sentences.

Q. OK. This does not include any copper product sold to these utilities?

A. That's right.

Q. It doesn't include all aluminum wire and cable products sold by Alcoa or Rome to these utilities?

A. That's right, it does not.

Q. It does not include all the products included within aluminum insulated or covered conductor wire and cable sold to these utilities?

A. That's right, it does not.

Q. And it does not list all of the utilities to whom Alcoa [fol. 2177] or Rome sold these so-called overlap products in 1958?

A. Are you asking me if this is a complete list of the customers that Rome—

Q. Exactly.

A. This is not a complete list of customers that Alcoa and Rome sold line wire and triplex to.

Q. Right.

And it is not a complete list of customers to whom Alcoa or Rome sold insulated or covered aluminum wire and cable in this year?

A. That's right.

Mr. Wertheimer: No further questions.

Redirect examination.

By Mr. Latimer:

Q. Mr. Pendorf, is this a list of the common customers who in 1958 bought the insulated or covered products which both Alcoa and Rome were making, the only insulated or covered products which both companies were making—is this a list of common customers?

A. Yes, sir, it is.

Mr. Latimer: Thank you.

Mr. Wertheimer: Nothing further.

[fol. 2178]: The Court: Wait just a minute. What this is is simply a list of concerns who bought covered or insulated aluminum conductor from both Alcoa and Rome in 1958.

The Witness: That's right.

The two items listed as shown on the attachment. The line wire and the triplex aluminum.

The Court: The line wire and the triplex.

The Witness: That's right.

The Court: All right.

(Witness excused.)

OFFERS IN EVIDENCE

Mr. Bergson: Your Honor, I am about to ring down the curtain on the Defendants' case. I have two exhibits that I would like to offer in evidence. Their relevancy may not be immediately apparent so I would like to explain the purpose of offering them.

One exhibit is a press release issued by the Department of Justice on June 5, 1961, and this has been marked, or I will ask that it be marked Defendants' Exhibit AR-79 for Identification.

(Press release above referred to marked as Defendants' Exhibit 79 for Identification.)

[fol. 2179] Mr. Bergson: You will recall, your Honor, that in the course of the argument on Defendants' motion to dismiss, Mr. Melchior made the statement that it was the Department's position that irrespective of all other considerations a company the size of Alcoa should not be permitted to acquire a company the size of Rome. And in the Government's brief the Government says, in explaining the reasons for the enactment of the Clayton Act, that there has been concern over the effect on individuals and communities remotely administered by giant corporations. Now, this press release, which I would like to offer in evidence, is a press release relating to a case that was brought by the Department against the Standard Oil Company of New Jersey and the Standard Oil Company of Kentucky. The case was settled, and as part of the settlement, the Standard Oil Company of California was brought in and was permitted to acquire the Standard Oil Company of Kentucky.

And the press release says: "Anti-Trust charges against the Standard Oil Company of Kentucky were terminated today by entry of a consent judgment permitting the firm to

[fol. 2180] merge with the Standard Oil Company of California."

Now, the press release—I will skip a little bit.

Mr. Melchior: Counsel, don't you think you should offer it before you read it into the record?

Mr. Bergson: Well, it is not in the record. I can't use it.

Mr. Melchior: Don't you think you should offer it first?

Mr. Bergson: I prefer to proceed the way I am proceeding.

The Court: I have got to find out what it is before I can rule on the admissibility. Go ahead.

Mr. Bergson: The press release then goes on to say that the Standard of California was founded in 1926. The California firm with principal offices in San Francisco is the twelfth largest corporation in the nation. In 1959 it had gross operating income of \$1,564,827,112. And Standard of Kentucky had 1959 sales of \$305,276,825. And then the [fol. 2181] Attorney General is quoted as saying:

"Despite the size of Standard of California we have agreed to this judgment and we have not opposed the merger because we believe it will stimulate competition."

Now, I have not read the complete release, but I think that it has a material bearing on this case in view of the position that the Department has taken in its brief, and in view of the position that Mr. Melchior took on oral argument, and I now offer the press release.

The Court: I assume there will be no objection, but go ahead.

Mr. Melchior: There is an objection, your Honor. There is an objection on the ground of relevancy.

We take no issue with any statement in the press release, but I think we should point out to the Court that this was a proceeding which was not under Section VII. This was a proceeding under the Sherman Act. And the document, since it's now in evidence, I think should be read in part to [fol. 2182] the Court.

Mr. Bergson: It is not in evidence yet.

Mr. Melchior: I beg pardon?

Mr. Bergson: It is not in evidence yet.

The Court: Go ahead.

Mr. Melchior: The complaint in this proceeding—what the situation briefly is, without going into too much detail, it was this: There was a marketing agency for Standard Oil of New Jersey and it was by virtue of these contractual arrangements between this marketing agency, which was the Kentucky Corporation, and Standard Oil of New Jersey that the Government sued. And the complaint charged that this sales contract between Kentucky and Standard Oil of New Jersey, the so-called 80 percent sales contract, violated Section I of the Sherman Act and Section III of the Clayton Act. It also charged that these firms had conspired in violation of the same section of the Sherman Act to allocate sales in certain states.

Now, it should be noted that the Kentucky organization was merely a marketing firm and had no production facilities. And through the settlement arrangement the parties agreed with the Government that the Kentucky sales organization should be divested from the Standard Oil of New Jersey and become a part of Standard Oil of California.

Mr. Bergson: What do you mean—

Mr. Melchior: May I finish. With the hope that the Standard Oil Company of New Jersey would set up its own marketing organization and thereby increase competition. There were really no change in facilities, merely a change of marketing organization from the Standard Oil of New Jersey to the Standard Oil of California.

The press release goes on to say "It is expected that as a result of the merger Jersey will set up its own marketing association to compete with the Kentucky organization in Mississippi, Georgia, Alabama, and those states where there is alleged to be the illegal contract."

And then the Attorney General goes on to say: "Despite the size of California we have agreed to this judgment and [fol. 2184] have not opposed this merger because we believe it will stimulate competition. Where we have had one giant in effect selling through Standard of Kentucky now we will have two competing against each other."

I think this, therefore, indicates a lack of relevancy in this press release to this merger.

Mr. Bergson: The fact that this case was a Section I or a Section III case is immaterial. The fact, the material fact,

is that this involved a merger. Standard of Kentucky was not a part of Jersey. It was a contracting party. It was a completely separate entity. And the Attorney General approved the acquisition or merger of a company with assets the size of Standard of California, of a company with assets the size of Kentucky.

Now, it seems to me that for the Government to get up here in this case and argue that this acquisition should not be permitted because Alcoa is so big and Rome was so big, [fol. 2185] that it doesn't make any difference what other effect there was, but this has an important bearing on that argument.

I think this is extremely material.

Mr. Melchior: I think perhaps the Court can take judicial knowledge of the fact that the transfer of the Kentucky marketing organization draws from Standard Oil of New Jersey, which is by far the largest petroleum company in the United States and the world to one, albeit large, but much smaller.

Mr. Bergson: May I ask what you mean by a transfer of the Kentucky organization? They have a contract.

Mr. Melchior: I am limited to what is in the press release, Counsel.

The Court: I mistrust that what Mr. Bergson wants to do is if you adopt the argument that size alone creates maybe a presumption of lack of competition or something of that kind, he would like to have this little press release as a shoring of his foothold, if you want to call it a toehold, I don't know what it is.

[fol. 2186] Mr. Bergson: I think it is more than that, your Honor.

The Court: I see no particular harm in it. It is a fact, and in our discussion I am not yet converted I don't think to the proposition that size alone is enough. So I don't think that it is of great importance here. I don't know what relevancy it has. Maybe the Attorney General, Mr. Bergson, made a mistake when he consented to that California merger.

Mr. Bergson: Well, I think he has made two mistakes, one when he brought this case.

The Court: I won't go into that. I went into that one because you mentioned it. Maybe he has a right to change

his mind. He may have been all right there and not here. I am not disturbed about that.

Mr. Melchior: May I state for the record that this Department does not oppose bigness as such. May I also ask the Court if it will indulge the Plaintiff the right to introduce or to offer the judgment in this proceeding, the consent judgment.

[fol. 2187] The Court: Yes. Let me finish with this first. Have you something else to offer?

OFFERS IN EVIDENCE

Mr. Bergson: The only other thing I have, your Honor, is Moody's Industrials on the size of Standard Oil of California and Standard of Kentucky.

The Court: All right, I will take it even before I give Mr. Melchior a chance. I will take it over your objection. What is the exhibit number?

Mr. Bergson: 80, sir.

(Defendants' Exhibits 79 for Identification and 80, received in evidence.)

DEFENDANTS REST

Mr. Bergson: The Defendants rest.

The Court: Off the record.

(Discussion was held off the record which the reporter was asked not to take.)

COLLOQUY BETWEEN COURT AND COUNSEL

The Court: Before you go, I want to cross-examine Mr. Bergson a little bit. I want to get again or try to understand these things as I go along. The testimony of Nesti, and to apply it against certain charts. Now, his testimony, as I recollect it, indicated that NEMA's reports on certain products did not represent the complete industry.

[fol. 2188] Mr. Bergson: That is correct.

The Court: So that the charts offered by the Government, the numbers of which I wouldn't accurately state now, simply reflect that companies.—

Mr. Bergson: They reflect only the companies reporting to NEMA.

The Court: That's right. And apparently leaving with me, or wishing to leave with me, the inference that they are not, I don't like to use the word reliable, they are reliable as far as they go, but they are not complete.

Mr. Bergson: They are not complete as industry statistics.

The Court: All right. Now, there was equated in the testimony charts offered by the Government and received which were based on Census figures. And I can't remember those charts—

Mr. Bergson: I can give you the numbers, if your Honor please.

The Court: As distinguished—that is, I can't remember the Census charts as distinguished from the Nema charts.

[fol. 2189] Mr. Bergson: The Census charts are Government Exhibit 455.

The Court: 455. Yes.

Mr. Bergson: And Government Exhibit 458.

The Court: All right.

Mr. Bergson: Now, those are the only two Census charts on conduit.

The Court: In some of his testimony he testified, as I recollect it, one of his charts was made from the reports of twelve producers.

Mr. Bergson: I think the number is wrong.

The Court: Two of which were not, on cross-examination that was brought out, were suppliers.

Mr. Bergson: Those were seven aluminum producers and it was brought out on cross-examination that these two did not necessarily make their own aluminum. But he also testified that that had to be made by somebody and that somebody did not report it under the Nema statistics because under the Nema reporting system since their dues are assessed on that basis, nobody ever reports.

[fol. 2190] The Court: Yes.

Mr. Bergson: Now, in addition, he testified, your Honor, that there were four other aluminum companies that didn't report to Nema at all, and of those four I think three were witnesses in this case.

The Court: Yes. I think I got that part of it. The Nema end of it. I have not got the Census end of it right. Wasn't there testimony that this witness obtained the number of producers who reported to Census, he couldn't get their names because that was forbidden by statute. He got the number who reported and that applied to some particular item of commerce which is here.

Mr. Bergson: The number that he obtained from the Census, as I recall it, and I will stand corrected if I am wrong, and I think the number that he recited are the same numbers that were contained in the letter from this Census that the Government introduced as Government's Exhibit 500.

The Court: Yes, I think so.

[fol. 2191] Mr. Bergson: That they, the Census, as well as he, used 18 companies for steel conduit and they had seven companies for aluminum conduit, just as he did. So that he was confident that all companies had not reported to Census, No. 1. Number 2, because of affiliations, because of interplant shipments and foreign transfers and so forth, as equated against the Nema figures, that the Census figure even as mentioned by the letter of February 1, I think it is, was understated. Now, he did not state how much it was understated. He just expressed the view that it was substantially understated. And as far as I know the record in this case now remains open as to what the total Census Universe can or should be.

The Court: But if the Census only got reports of substantially the same number that Nema got and Nema didn't cover the whole industry, my problem is how far did the Census fail to cover the whole industry?

Mr. Bergson: This is the infirmity, your Honor. Now, Mr. Nesti testified he didn't know whether the 19 companies [fol. 2192] that reported to Census were the same 19 companies that reported to Nema.

The Court: Does anyone know how many companies?

Mr. Bergson: Census knows but it won't tell you.

The Court: Does the record, I will put it this way, do I have any way of knowing how many companies there are whose product should be included in the Universe figure to get a correct chart?

Mr. Bergson: No.

The Court: It is not in the record.

Mr. Bergson: I don't think the record would support a correct chart. Now, I must say, your Honor, that so far as the defendants are concerned, we don't think it is our burden to establish the correct chart. We know this is wrong. We can't prove what is right.

The Court: Well, I know what Mr. Melchior, who is about to rise, is going to say. I can understand him. He is using the best figures that he has got and he advances the argument that the Census figure includes more than the particular production that we have in litigation here, besides those foreign shipments and so on, and fittings. And that therefore he asks me to infer that the Census figure is high in so far as it appears but he doesn't answer very directly to me why it shouldn't cover the production itself.

Mr. Bergson: Well, all I can say to that, your Honor, is that Mr. Nesti stated that in considering the fittings, the foreign shipments and everything else, he thinks that the Census figures are understated. Now, this is not in the record, and I don't know whether I should allude to it or not.

The Court: Well, we have violated almost every rule of evidence that I will go ahead and take one more thing.

Mr. Bergson: In Mr. Nesti's figures Youngstown Sheet and Tube is not included as a supplier of steel conduit. Youngstown Sheet and Tube is the largest supplier of conduit in the United States and it supplies, I am informed, between 10 and 12 per cent of the conduit market.

I am sure that Youngstown Sheet and Tube reported to the Census. A company of that size, I am quite sure, would have reported to the Census. But this is one reason why his figure seems to be at variance with the Census. And the incomplete coverage of his figures.

[fol. 2194]. There is no question about that. We are trying to grab onto something, as a universe figure, which we can't come up with and we haven't solved the problem. We have cast doubt, I think, on what the government universe is and

the propriety of the government's universe and the propriety that we have such and such a percent of the market. I don't concede it to be adverse to show what our percentage of the market actually is. I think it is the government's burden to show what our actual percentage of the market is. I would have done it if I could have, but Mr. Nesti said that all he could say was that he was sure that the Census was substantially understated, but he couldn't say that instead of being 125 million it should have been 150 million or 140 million, and Mr. Melchior, on the cross-examination, didn't ask him what he thought it should be.

The Court: Well, I think I probably got my finger on the [fol. 2195] problem that exists in my own mind. How it is going to be eventually left or whether it is going to be left the way it is is something else. The question is, what can I do with it?

Mr. Melchior: On that point, we are going to try to clarify that for you tomorrow; but I would also like to state that you must recall that the NEMA witness testified that he collected with respect to aluminum conduit, particularly, statistics one way. His seven companies, he admitted—and defendant's answers to interrogatories admitted—it contained two companies who did not fabricate. They were merely resellers. So now with his five companies of the type that would report to the Census, Mr. Nesti is attempting to cast doubt on the Census total without one shred of evidence in the record that there is anything wrong with the Census total merely because he happens to have seven companies in his aluminum total and eighteen companies—

[fol. 2196] Mr. Bergson: That wasn't his testimony.

The Court: I don't go for that. He produced NEMA's figures and he says he knows that they do not cover the field. Now, for instance—but your witness, if I understood him properly, says your records are so close or they may differ quite a little, but anyway, when a thing like Youngstown is left out of his records, and presumably in yours, why the increase is not enough which says or satisfies him that you have the correct universe either, and I have no record and no way of knowing how many of these companies there are in the United States that make this particular product. I don't have it, do I? I don't have in the record how many report in the Census.

Mr. Melchior: Seven. That is in evidence.

The Court: On which particular seven?

Mr. Melchior: No, we do not have that in the record; or [fol. 2197] which particular eighteen, we don't have that in the record.

The Court: If you can clear it up, I will be glad to have you clear it up by proof. But it leaves it awfully hazy in my mind—the value of the universe that is set up in your charts. It is pretty definitely set in my mind that the value of the universe, based on NEMA, is of no value.

Mr. Melchior: I agree, the weight of the NEMA chart—

The Court: Is badly shaken.

Mr. Melchior: I agree with that.

The Court: There is certainly a doubt cast on the weight of the Census charts.

Mr. Bergson: Your Honor, if you will recall, the NEMA charts, when they were offered, were offered for the purpose of shoring up the Census charts.

Mr. Melchior: Now, if I may, your Honor, I will explain why that happened. You will recall in—

[fol. 2198] The Court: Listen, gentlemen. I really don't care what it is. What I am trying to do is to get a little better understanding out of these cases as they go along. If not, I will wind up on these charts badly balled up. In trying to think the thing through, the more I think the more confused I become. That is why I bring it up in this informal way to clear it, and it doesn't make very much difference—the reasons—you have two propositions, one that the NEMA Charts concededly don't represent the whole industry, so that a chart based on that is of very little value to me, I think.

Now, the next thing that there is is that the charts are based on the Census. Certainly this witness' testimony cast some doubt in my mind, at least, on the value of the Census reports of the universe figure. Now, it may be the thing has got to be left the way it is upon the theory that the government has given all they can. I don't know. If it could be [fol. 2199] cleared up, I think I would be a little bit better satisfied in my own mind, at least, because we are getting down here, I think, to a comparatively small proportion or percentage, where if you don't start out with the right uni-

verse figures, you can stray way off on your percentage figure as a result of it. There is my difficulty.

Mr. Melchior: May I make one comment on that?

The Court: Sure.

Mr. Melchior: I think the reason the witness was given an opportunity to impute the inherent weakness of the NEMA statistics was because of the strange coincidence that the numbers of these companies making conduit, generally, and in aluminum specifically, happened to be the same. You had two eighTEENS and two SEVENS, but what your Honor has to realize is that in the NEMA eighteen and in the NEMA seven there are some obvious duplications because the totals include some resellers.

[fol. 2200] Now, may I finish, counsel? Now, if from the NEMA total we could pick out the duplications and the resellers—and we know that there are two in the seven figure, leaving five—then there would be no inconsistency in comparing five with seven.

The Court: I don't follow you at all. I don't know whether there is seven or seventeen. If they haven't got the whole total of the manufacturers of that product, their universe figure is wrong.

Mr. Melchior: There is no evidence that the Census does not have the total, your Honor.

The Court: I know. I am talking now—you are talking about these two that are sellers. I don't see how that is important.

Mr. Melchior: Those two sellers would not have been counted by Census.

The Court: I don't care whether they were counted or not counted; NEMA says that the figures he has does not represent [fol. 2201] sent the whole industry. Now, it doesn't make any difference whether it is seven or five, he says; they don't represent it. If they don't represent it, you are starting on a false assumption to draw a percentage.

Now, how far the Census figures represents the whole industry, I don't know.

Mr. Melchior: We think they do.

The Court: I know, but there isn't much of any proof on it. In fact, doesn't the proof go just the opposite? For instance, let's say that 458—

Mr. Melchior: That is the aluminum.

The Court: That is based on Census?

Mr. Melchior: That is based on Census, yes, sir.

The Court: Now, that's the value of shipments of aluminum conduit in 1960. How many manufacturers are there in the United States in 1960 that make and sell aluminum conduit?

Mr. Melchior: We have from another document the figure [fol. 2202] from Census, seven fabricators.

Mr. Bergson: And, your Honor, you will recall that there were three witnesses who testified here, who are not included on the NEMA list—I don't know whether they were included in Census or not—but the fact of the matter is that—

The Court: There were more than seven.

Mr. Bergson: There are more than seven. And, your Honor, to clear up one thing about the NEMA statistics, you will remember that Mr. Nesti was most emphatic in stating there was no duplication in the NEMA figures and, according to our answer to the defendant's, or the plaintiff's interrogatories, we listed thirteen producers of aluminum conduit.

The Court: You see, that is what confuses me. I assume—and I will admit I don't know where it is in the record—that there are more than five or seven aluminum conduit manufacturers in the United States.

[fol. 2203] Mr. Melchior: There are a number of resellers, your Honor, but there is no evidence in the record, or there is no way to identify more than seven fabricators.

Mr. Bergson: I can name them offhand.

Mr. Melchior: In 1960?

Mr. Bergson: I could name them offhand, and you could name them offhand.

Mr. Melchior: This is one year.

The Court: You can see what my difficulty is.

Mr. Melchior: I can appreciate it, your Honor.

The Court: The same thing on this other one where we had eighteen. That is a different product.

Mr. Bergson: That is 465. That is the whole works, your Honor. You see, your Honor, that includes everything. It includes aluminum and steel. That is the other line of commerce.

Mr. Melchior: There is no way for the defendant to show [fol. 2204] that the Census total is not complete there. They know that NEMA didn't have Youngstown, that they didn't show—that Census did not—

The Court: Well, I think, Mr. Melchior, that that is right, that you have to get your reliance upon a percentage, which you are, and these charts. I think you do have to show its accuracy rather than the intentness to show it is in error. I think if they point out to you, if they raise no objection, I think the Court would be justified in finding it is accurate, but when they point out to you where there is what they call inaccuracies, they then—then the burden shifts back to you or stays with you. It never shifts at all—to show the accuracy of the chart.

Mr. Melchior: I will agree, if they demonstrated the inaccuracy, which I don't believe they have.

The Court: I think they have done enough to cast a little doubt on it.

Mr. Melchior: Well; apparently so. We will try to have a [fol. 2205] witness tomorrow to reassure the record.

The Court: All right. We will recess until tomorrow morning. Will you be ready tomorrow morning?

Mr. Melchior: Yes, we hope so.

The Court: How long?

Mr. Melchior: A very short time. I think we will have a handful of documents and two witnesses.

The Court: You will finish tomorrow?

Mr. Melchior: Yes.

The Court: Tomorrow morning at ten o'clock. Recess until tomorrow morning at ten o'clock.

(Whereupon, at 4:08 p.m., an adjournment was taken to Thursday, March 1st, 1962, at ten o'clock a.m.)

[fols. 2206-2207] [Title omitted]

Transcript of hearing—May 1, 1962

[fol. 2208] The Court: Mr. Bergson, while you rested yesterday I suggested that you check over your exhibits so there will be no misunderstanding about it. Have you done that?

Mr. Bergson: Yes, your Honor. We did check over our exhibits and we find that we had offered all that we intended to offer. During the course of the Government's case we had marked for identification six exhibits which we did not offer in our own case. These are Exhibits AR-1, 2, 3, 8, 10, and 11.

Now, 1, 2 and 3, I believe, your Honor, were the earlier versions of some of the charts that were introduced because at that time we didn't have 1961 statistics. And when we got the 1961—I mean, we had marked for identification, not introduced. When we got the 1961 statistics we substituted the more up-to-date charts for the ones we had previously marked for identification.

The Court: Yes. The way I have it, I think that might be right, from my notes.

Mr. Bergson: I can check it in a minute.

The Court: I don't think it is necessary so long as you [fol. 2209] agree among yourselves. Then with that you rest again?

Mr. Bergson: Yes, sir.

The Court: All right. Rebuttal, Mr. Melchior.

Mr. Melchior: Mr. Leo Finn.

LEO V. FINN, called as a witness in behalf of the Government, being first duly sworn, testified as follows:

Mr. Melchior: Will you mark this for identification?

(Chart and tabulation attached marked as Government's Exhibit GX-502 for identification.)

Direct examination.

By Mr. Melchior:

Q. Would you state your name and place of employment?

A. Leo V. Finn. I am employed in the Antitrust Division, Department of Justice.

Q. What is your present position?

A. I occupy a business economist's position.

Q. How long have you been employed by the Antitrust Division?

[fol. 2210] A. I have been employed in the Division about 23 years.

Q. What is your educational background?

A. I am a graduate of Columbus University and have a bachelor of commercial science degree.

Q. Now, Mr. Finn, in connection with your assignment to the Rome-Alcoa proceeding, have you prepared a chart and tabulation dealing with the production and sale of primary aluminum by Alcoa?

A. Yes, I have.

Q. Would you identify it?

A. This chart and accompanying table is entitled "Alcoa Primary Aluminum Production Sold to Customers and Used by Alcoa."

Q. Is there a tabulation attached thereto, Mr. Finn?

A. Yes, sir, there is a tabulation that accompanies this chart.

Q. Now, what does this chart and tabulation purport to show?

A. Well, it shows a relationship between Alcoa's production and the volume of primary aluminum they have used in their own operations, and the volume that has been sold to outside their own operations. Also it includes the invento-

[fol. 2211] ries at the beginning of the year and the inventories at the end of the year.

Q. Now, what period of time does this chart cover?

A. It covers from 1950 through 1960.

Q. What were the sources of information you utilized, Mr. Finn, in preparing this chart and tabulation?

A. This tabulation is from the Defendants' Exhibit AR-44 and AR-44A.

OFFER IN EVIDENCE

Mr. Melchior: I offer Government's Exhibit 502 for identification.

Mr. Bergson: No objection.

The Court: Received.

(Government's Exhibit GX-502 for identification received in evidence.)

Q. Mr. Finn, directing your attention to Government's Exhibit 502, and in particular the chart, what is the relationship between Alcoa's production of primary aluminum and the volume of primary aluminum used by Alcoa in its own operations?

A. Well, this shows that over this period of time, from 1950 to 1960, the dominant part of the production has been used by Alcoa in its own operations. In comparing the volume used by Alcoa to the amount that they have sold outside [fol. 2212] their own company, has been relatively small in comparison to the amount that they have used themselves.

Q. Now, have you made any computation as to the percentage of its primary aluminum production which Alcoa used in its own operations?

A. Well, for instance, in 1960, the last year we have here, about 67 per cent was used in their own operations, and in 1959 there was about 86 per cent, and it has varied somewhat. In 1957 it dropped, it was down to 53½ per cent.

Q. And how do you tell that by looking at the chart?

A. Well, of course, the chart doesn't show any percentage but it is meant to be visual that you can see it.

Q. Which particular shaded area would that be?

A. Well, I think at the top you find a legend to the chart and if you are attempting to find out or to compare the amount used by Alcoa, you merely refer to the legend.

Q. Now, does this chart demonstrate any relationship between Alcoa's production of primary aluminum and its sales of primary aluminum to non-integrated fabricators?

A. Yes, it does.

[fol. 2213] Q. Would you state what that might show in one of the recent years?

A. Well, for example, in 1960, it shows about 7.8 percent was sales to fabricators; in 1959, about 13 percent; in 1958, about 16 percent, 16 or 17 percent.

Q. Now, does this tabulation indicate in any way the volume of primary aluminum that was exported or which was held in inventory by Alcoa at the end of any particular year?

A. Yes, there is a total figure here which includes—it is consolidated with exports, stockpile, toll conversion, exchange and sale to other primary producers.

Mr. Melchior: You may examine.

Cross-examination.

By Mr. Bergson:

Q. Mr. Finn, do you have available to you Defendants' Exhibit AR-44—well, here, I will show you my copy. Doesn't that chart also show that the majority of Alcoa's primary production was used in its own fabrication?

A. Yes, it does.

[fol. 2214] Q. Now, may I ask you why in preparing Chart GX-502 you did not provide for unused capacity of Alcoa in the chart?

A. Well, the purpose for which I drew this chart was to base it entirely on actual transactions that had taken place in the company over this period of years.

Q. But if you had shown unused capacity, you would have shown more aluminum available to independent fabricators, would you not?

A. Well, not in the sense that—well, capacity is sort of an intangible, the amount of production—what I am trying to say, yes, there would be some excess capacity to make more aluminum, but, as I say, this chart doesn't deal with that sort of phantom figure.

Q. If that is such a phantom figure, why did the Government in its case in chief introduce a chart on aluminum

capacity in the United States for the year 1960? This is Government Exhibit 465.

A. Well, the relationship there is capacity to capacity, and I have no quarrel with that.

Q. Is it really phantom if it is available, if there are orders for it?

[fol. 2215] A. Orders for it?

Q. Is excess capacity really phantom if it is available to fill orders for aluminum?

A. Well, the capacity is there to make more aluminum, I will agree with that.

Q. Isn't that highly significant? Hasn't one of the Government's contention in this case been that because of Alcoa's acquisition of Rome, and try to show because of its acquisition of Cupples, there would be less aluminum available for non-integrated producers?

A. Well, I think the record shows that there are many statements with respect to capacity of Alcoa as compared to the rest of the industry, and when I drew this chart I merely confined it to actual transactions that had taken place in the company.

Q. Well, in drawing this chart you show a lot in this crosshatched—I guess it is not hatch, these diagonal lines would show amounts in inventory; don't you think that Alcoa would have been happy to sell that if they had the opportunity to sell it?

A. Undoubtedly.

Q. And don't you think that Alcoa would have been happy to use its unused capacity if they had orders for it?

[fol. 2216] A. Yes, I do.

Q. So that when you said in 1960, for example, that 7.6 per cent of Alcoa's production was to non-integrated fabricators, how much would you say of its production was available for sale to non-integrated producers?

A. Well, of its production in that particular year, the rest of the inventory would be available.

Q. And would not its excess capacity be available?

A. Yes, if the market warranted it.

Q. So, therefore, 7.6 isn't a fair figure?

A. Well, it is based merely on transactions that had taken place.

Q. But it doesn't prove anything?

A. I am not trying to prove anything here.

Q. I thought that is why the chart was offered.

A. Well, I am trying to enlighten—

[fol. 2217] Q. Frankly I don't see how this chart is any more enlightening than our chart, AR-44 was, except that you do it in bars and we did it in graph form.

A. I like to think that this is more readily readable and, of course, there were some adjustments made in the figures.

Q. Now, in—were the adjustments major or minor?

A. Oh, minor.

Q. To what degree? Would it be as much as one percent?

A. I am speaking about the sales and particularly the export sales in the latter years that were on the other chart. I think that those were adjusted by the introduction of AR-44-A.

Q. They weren't adjusted, were they, they were made clearer?

A. It was a supplement.

Q. Yes. They were made clearer. Now, in discussing Alcoa's percentage of production used in its own fabrication as against its total production, you gave us the figures for the year 1960, which I think you said was about 67 percent.

[fol. 2218] A. Yes, about 67 percent.

Q. And for 1959?

A. It was about 86 percent.

Q. And for '57?

A. 53 percent.

Q. You didn't give us the ones for '58; did you?

A. No.

Q. What were those?

A. 68 percent.

Q. 68 percent? It looks to me like it has to be a little lower.

A. In '58 you speak of?

Q. Yes.

A. I got a rough figure here of about 68 percent.

Q. Well, it doesn't matter, I just wondered why you took '57, '59 and '60 and didn't use '58.

A. Oh, no, I just skipped over.

Q. Now, Mr. Finn, you have been here during the course of the entire trial, haven't you?

A. Yes.

Q. And you heard testimony regarding the so-called, not so-called, the aluminum shortage in 1955 and early 1956. [fol. 2219] I think they began to see the light in July of 1956; do you recall that?

A. I heard it.

Q. I think I am stating it correctly. Would you look at the years '55 and '56 and tell us what percentages of Alcoa's production was sold to non-integrated fabricators as against its use in its own production.

A. Well, in '56—

Q. Just taking two now, the dark line and the actual sales to fabricators. We are ignoring the exports and the inventory.

A. '56 was one of the years you asked about?

Q. '55 and '56 I asked about.

A. I will give you '56. The amount used by Alcoa was about 64 percent and the sales to other fabricators is about 23 percent.

Q. Right. I assume this is right. Now, in '55 what was it?

A. I have not worked that out.

Q. Can you work it out?

A. I will be glad to. It is over 20 percent.

Q. Now, in those two years, which are the years that have been testified to as the shortage years, isn't the percentage [fol. 2220] sold to non-integrated as compared to Alcoa's use in its own consumption far greater than it was in any of the other years that appear on that chart?

A. Yes, sales to fabricators in '55 and '56 were larger than, percentage-wise, than those in the later years from '57 on through '60.

Q. And also the earlier years?

A. Perhaps they are. I have not—

Q. So that during '55 and '56, in the years of the shortage, Alcoa apparently cut back its own production in order to make aluminum available to non-integrated producers—on its own fabricating in order to make aluminum available to non-fabricators?

A. I wouldn't know.

Q. Doesn't the chart indicate that?

A. I wouldn't know whether they cut back their own production. All I know is.—

Q. If there was a shortage year and they used a smaller percentage, it would seem to me to follow that they could have used it if they so chose, but it apparently is as Mr. Magee testified that they rationed themselves just the way they rationed everybody else, even to their detriment; isn't that true?

[fol. 2221] A. I don't know that.

Q. Doesn't that seem to be—

A. The chart indicates that there was less used by Alcoa in those particular years.

Q. In the shortage years?

A. Yes, that's right.

Q. And more made available, or more available to non-integrated, or more sold, let's put it that way, more sold to the non-integrated in those two years?

A. Well, perhaps in '55 or '54 it seems like a small amount went to fabricators.

Q. I am talking about percentages. Let's take percentages of '54 and the percentage—cut the chart off at the export line. Now, of the Alcoa production used in its own fabrication and of Alcoa production sold to non-integrated, what percentage was used by Alcoa in its own production?

A. In 1954?

Q. In 1954.

A. Roughly about 40 percent was used in their own facilities.

Q. In '54. I am just talking now about the dark part of [fol. 2222] the line and the little dots. The dotted portion. About 800 and—

A. I don't follow you, Mr. Bergson.

Mr. Bergson: Am I making myself clear to your Honor?

The Court: Yes, I can understand what you mean.

Q. What I am trying to ask you to give us is what percentage of this (indicating).

A. Yes.

Q. (Indicating) This much.

A. Yes.

Q. Was used by Alcoa?

A. That has all been used by Alcoa.

Q. No, in its own production, its own fabrication.

A. As in relationship to production?

Q. No; as in relation to these two (indicating).

A. Oh, I see. It is a little over 80 per cent.

[fol. 2223] Q. Are you sure it is a little over? It is not more than a little? I think it is closer to 85.

A. I get about 82 per cent.

Q. Well, it doesn't matter. Now, make the same computation for 1955, because I am not sure you understood my previous question.

A. On the same basis?

Q. On the same basis, yes.

A. I'd say it's about 65 per cent.

Q. And would you make the same computation for 1956?

A. I get about 86 per cent.

Q. You get what? I think you better do that again.

A. I am not doing this under the best conditions.

Q. I don't see how 1955 can be 65 per cent and 1956 be anything but less than 65 per cent.

A. You are asking me for 1956?

Q. Yes, and just the ratio of this dark line and the dotted portion (indicating).

A. I see. I still get about 80 per cent.

The Court: It couldn't be. Look at your graph right in front of you. If in 1955 the production was 65 per cent used in its own by Alcoa, 1956 must be less than that. It has to be.
[fol. 2224] Mr. Bergson: It's got to be less than 65.

The Witness: Sure, it has. It is about one-sixth, sold to outside fabricators.

By Mr. Bergson:

Q. I hate to take up the Court's time, but I think you are wrong. If you are not wrong, your graph doesn't mean anything, because this hatch part certainly doesn't occupy one-sixth of the line from the beginning where the numerals 1956 are out to the end of the dotted part. It is so apparent on its face that either your figures are wrong or your chart is wrong. Don't you have to do this, don't you have to in order to make this computation—

A. (Interrupting) I am sorry.

Q. You have got to take the part used by Alcoa and you add to that, which in 1955 we were talking about, first used by Alcoa was 951,000 or 951,000,000, approximately, right?

A. Yes.

Q. And sales to fabricators, which was approximately 295,000,000, right?

A. Yes.

Q. Then don't you add those two together and divide [fol. 2225] the sales to fabricators by the total that you get to get the percentage sold to fabricators?

A. Yes, you are right. I was adding here. I didn't look across the sheet, and I was putting in exports and adding that to sales and coming out with a percentage.

Mr. Bergson: Do you wish me to take the time to do this, your Honor?

The Court: I think that it is apparent here that in the years 1955 and 1956, if I understand the chart right, there was percentagewise, there was more aluminum sold by Alcoa to non-integrated fabricators than there was in the years immediately preceding 1955 and in the years immediately following 1956.

Mr. Bergson: Your Honor, we have worked out these computations and we find that in 1954 Alcoa's percentage used in its own fabrication was 85.7 per cent; in 1955 it was 76 per cent; and in 1956 it was 73 percent. Now, do you want to accept those, Mr. Finn, or do you want to do them yourself?

The Witness: Well, I will accept them.

[fol. 2226] By Mr. Bergson:

Q. Now, starting with that as a premise, would you as an economist and as a statistician conclude that in the so-called shortage years of 1955 and 1956 Alcoa made more or less of its production available to non-integrated producers than it used in its own fabrication?

A. Yes, percentagewise they did.

Q. And also tonnagewise, that is apparent from the face of the chart?

A. Yes.

Mr. Bergson: Thank you. No further questions.

The Court: Redirect.

Redirect examination.**By Mr. Melchior:**

Q. Mr. Finn, do you know whether or not the Government aluminum set-aside program was in effect in the years 1955 and 1956?

A. I am not too familiar with it, but I understand it was.

Mr. Melchior: That's all.

Mr. Bergson: No further questions.

The Court: All right.

(Witness excused.)

[fol. 2227] **Mr. Melchior:** Mr. Bernsten.

BERNARD P. BERNSTEN, called as a witness in behalf of the government, being first duly sworn, testified as follows:

Direct examination.**By Mr. Melchior:**

Q. Would you state your name and place of employment?

A. Bernard P. Bernsten. I am employed in the industrial division of the Census Bureau, U. S. Department of Commerce.

Q. What position do you hold?

A. I am chief of the electrical machinery and transportation section of the industry division.

Q. How long have you held this position?

A. I have been in the section a little over two years; acting chief of the section starting in May last year and chief of the section beginning in June of last year.

Q. Now, in general what type of work does this position involve?

A. The direction of the collection, compilation and publication of statistics, economic statistics of the major groups [fol. 2228] which fall within the section; which are Major Group 19, ordnance and accessories; Major Group 36, electrical—when I use "major group" it is in the standard in-

dustry relation; Major Group 37; Major Group 38, Instruments and up until a couple of months ago Major Group No. 39.

Q. How long have you been engaged in the field of statistic analysis?

A. A total of a little over six years.

Q. What is your educational background, Mr. Bernsten?

A. B.A. magna cum laude and a Master's degree at Fordham University. I completed my Ph.D. requirements and I majored in economics and have taken courses including courses in statistics.

Q. Mr. Bernsten, I hand you government's Exhibit 498 for identification and ask you if you will identify it.

A. This is a release put out by the Census Bureau last October 19th in our current industrial report series. It covers the shipments, quality and volume of shipment of wire devices and supplies in the year 1960.

OFFERS IN EVIDENCE

Mr. Melchior: I offer government's Exhibit 498 for identification [fol. 2229] at this time.

Mr. Bergson: No objection.

The Court: Received.

(Government's Exhibit 498 for identification received in evidence.)

Q. Now, Mr. Bernsten, do your responsibilities include the assembly of information which is compiled in this report?

A. They do, sir.

Q. Now, is there a form used in the collection of this information by the Bureau of Census?

A. There is, sir. Census form MA-36-K.

Q. I hand you government's Exhibit 499 for identification and ask you if this is the document?

A. Form MA-36-K.

Mr. Melchior: Your Honor, we don't have an extra copy of this.

The Court: This is the instruction sheet; is it?

Mr. Melchior: Yes, sir, this is the instruction sheet.

The Court: All right.

Mr. Melchior: We will interrogate the witness about it.
[fol. 2230] The Court: All right.

Mr. Melchior: I offer government's Exhibit 499.

Mr. Bergson: No objection.

The Court: Received.

(Government's Exhibit 499 for identification received in evidence.)

By Mr. Melchior:

Q. Now, directing your attention to government's Exhibit 499, Mr. Bernstein.

A. Is that the form, Mr. Melchior?

Q. That is the form MA-36-K. Does this form include categories, product categories of electrical conduit and electrical fittings?

A. Yes, sir, it does.

Q. Would you identify the product categories by their code numbers?

A. Yes. The inside of the form toward the lower portion under "Non-current carrying wire devices——"

Mr. Bergson: Mr. Melchior, excuse me. We have an extra copy for the Court.

Mr. Melchior: Fine. I appreciate that.

[fol. 2231] The Court: All right.

A. Under "non-current carrying wire devices," Code 36442, the general code and class of products electrical conduit and conduit fittings is category "Rigid Conduit (standard weight) including couplings, nipples, bends and elbows." Under that, under Code 3644221 is indented the category "Steel."

The next code, 3644222, indented directly under steel, "Other." There is another heading which would be under where we begin rigid conduit, this is electrical metallic tubing (thin wall conduit), including couplings, nipples, bends and elbows.

Code 3644223, identification, "Steel."

3644224, indented under that, "Other."

There are a couple of other categories. Shall I go into all of them under the general head "Electrical conduit and conduit fittings" or only those four?

Q. Let me ask you this, Mr. Bernstein, as I read this form the field of rigid conduit is divided into two groups. One is "steel" and one which you categorize as "other"; is that correct?

A. That is correct, sir.

[fol. 2232] Q. Would all steel conduit be included under the "steel" category?

A. It would, sir.

Q. What would be included under the "other" category under rigid?

A. All other metallic non-steel rigid conduit.

Q. All metallic conduit?

A. That is correct.

Q. Would this include aluminum rigid conduit?

A. Presumably, if rigid conduit is made of aluminum, it would be classified "other." All aluminum and any other non-steel metal.

Q. That's right. Now, your next broad category is EMT, which is electrical metallic tubing.

A. That is correct.

Q. And I see you have a dual breakdown there, "Steel" and "other".

A. Similar to the other.

Q. Would all steel electrical metallic tubing be included under the heading of "steel"?

A. Yes, sir, it would.

Q. And what would be included under the heading of "other"?

A. All other non-steel electrical metallic tubing.

[fol. 2233] Q. And would this include aluminum electrical metallic tubing?

A. Yes, it would, presumably yes, all other non-steel metals.

Q. Now, I notice there are other categories listed below that such as flexible steel conduit, raceways and raceway fittings and so forth.

A. Yes, sir.

Q. Now, I ask you would any rigid steel conduit be included under any of these other headings properly?

A. No, sir, they would not. Under the product distribution there is only one line for "steel rigid conduit," and that is under Code 364421 previously mentioned.

Q. Would any other rigid metallic conduit be included under any of these other categories?

A. To use your word before, "not properly." There is only one line for the 3644222.

Q. With respect to EMT steel conduit, would any of the EMT steel conduit be properly included in any of these other headings?

A. No, sir.

[fol. 2234] Q. Now, how about any other EMT metallic conduit, would any—

A. There should not be other than for Code 3644224.

Q. Now, is the submission of this report required by law, Mr. Bernstein?

A. Yes, it is mandatory under provisions of an act of Congress 13 U. S. Code, and is so stated on the cover letter which went with this report, such as states "The inquiry is authorized by Act of Congress 13 U.S.C. 18, which requires that you submit this report."

Q. Are there penalties involved for non suppliers of this information?

A. There are, but I could not tell you exactly what they are.

Q. Now, Mr. Bernstein, would you generally describe the studies the Bureau of Census utilizes to insure that the information submitted in government Exhibit 499 is complete, and that the coverage from a company standpoint is complete. General description, if you will.

A. All right. As with any so-called complete coverage Census survey, I use the term because in some areas we use [fol. 2235] just sample techniques and inflate for establishments which we do not cover. This is not one of these, this is a complete coverage survey. In a complete coverage survey such as this we use as a source of our current list of respondents first of all the prior complete Census of Manufactures for the commodity specifically covered on the survey form. Number two, we of course realize that between the quinquennial Census of Manufactures other establishments, we call them births, could come into the manufacturing field.

We therefore check, by taking the records of the BOASI, Bureau of Old Age Survivors Insurance, by law anyone who employs one old age employee must pay a social se-

curity tax and they file with BOASI in Baltimore. They file a description as to what types of commodities, what type of business they are in—excuse me—what type of business they are in. And BOASI uses the same classification system as the Bureau and others do. The Budget Bureau, standard production classification annually. They will assign to the establishment a four-number code based on their business activity. The second of this survey would therefore follow, [fol. 2236] and anyone would be coded 3643, current carrying wire and devices, or 3644, non-current carrying wire and devices. In addition to which we use other readily available lists of manufacturers. For instance, we use Dun and Bradstreet and Thomas's Register.

This is pretty much—well, we are human, we do everything humanly possible to make sure that we have everyone who is classified as a manufacturer within the scope of such a manufacturing survey.

[fol. 2237] Q. I see. Now, you stated, I believe, that finally you checked the previous census of manufacturers as a starting point?

A. That is correct, sir.

Q. When was that?

A. 1958, covering the year 1958.

Q. Now, directing your attention to Government Exhibit 499, which is your form MA36K, your reporting form?

A. Yes.

Q. Would you state in a general fashion the manner in which this form was prepared?

A. Yes. This survey on wiring devices and supplies, which is now a part of a continuing Census Bureau program in our current industrial report service, was initiated to cover the first year, 1960, the types, the classifications of the products to be covered were essentially covered in the same manner in the complete census of manufacturers, so we began by using as the basic product stub, if you will, the same information which we had collected as part of the census of manufacturers.

Then as the Standard Bureau on Procedure, since we are solely a publisher of statistics, we are not analyzers or [fol. 2238] users of statistics, therefore we went to people who are the major users of this type of data, in this case it would be manufacturers and manufacturing associations,

together with pertinent government agencies, we went over the proposed form, both by mail and in person—I don't know whether I should use the term meeting or meetings, there was at least one meeting with industry representatives and at least one with government representatives. Suggestions were given to us as to what type of data should be collected over the data collected in 1958 and I believe it can be noticed that in the current industrial report, the published figures, the results of the collection of the data on this form, you can see there were in some cases expansion of categories as against that which was collected in the census. As a matter of fact, the items on conduit are some in point. I believe what we had originally done on collecting the data on conduit, we either just collected all conduit or perhaps just rigid and electrical metallic tubing, but on the advice of users we attempted to get a break in 1960 between steel and other on both rigid and EMT.

[fol. 2239] After we received the pertinent comments of industry and government users, incorporated those, it was felt we would have a fairly good chance of collecting and publishing meaningful data. As is required by law we submitted the report, the proposed report form to the Bureau of the Budget, which, of course, must approve any such product. There is an office there of OSS, Office of Statistical Standards, within the Budget Bureau, which gave final approval and we initiated collection of data for 1960.

Q. I take it quite a bit of work went into the preparation of this form?

A. As with any form, yes.

Q. As with any form of the Bureau of the Census?

A. Yes.

Q. There were consultations with industrial members?

A. Yes.

Q. Did you consult with BDSA?

A. Yes, this is the Business and Defense Service Administration, another agency within the Department of Commerce.

Q. Did the Bureau of Census consult on this form with [fol. 2240] the National Association of Electrical Manufacturers?

A. You mean NEMA?

Q. Yes.

A. Yes, we did.

Q. There were representatives at meetings you held on this particular form?

A. Yes, sir.

Q. Now, Mr. Bernstein, let me ask you this, what is the view, if you know, of the Bureau of Census as to the completeness of its coverage of respondents with respect to the submission of GX-498, which is the wiring devices and supplies report?

A. Well, I am not sure I am clear on your question. Respondents give us 498.

Q. 499.

A. Respondents submit the form.

Q. Yes.

A. Well, not anticipating this question, but I attempted to give a full explanation before of what we do to insure complete coverage. We checked all available records of manufacturers of these products, and we feel that we have them all. As you know, the Director of the Census Bureau in response to a request, wrote a letter to you on February [fol. 2241] 13, and I can no better state it really than what he put in that letter, namely—

Q. (Interrupting) Would you read that into the record?

A. "We are satisfied with the results of the survey and are convinced of the reliability of the figures we have published as revised in the Bureau's letter of February 1."

This, of course, is specifically in reference to the figures as published as to the coverage, again within the realm of possibility, it is not divine revelation or infallibility, but within the realms as is humanly possible, we feel we have complete coverage of all manufacturers of wiring devices and supplies as defined within the scope of the Census of manufacturers.

Q. Now, do the figures contained in GX-498, with particular respect to the electrical conduit figures, include exports?

A. Well, if I may answer it sort of indirectly, sir, if there were exports of any of these items in 1960, they should be included here. Our figures that we collect are quantity and value of shipments f.o.b. the factory, regardless of the final [fol. 2242] destination. If the manufacturer, either directly exported or shipped directly to an exporter, it is the

same as if it went to any commercial establishment, they should be included within these figures here. There is no way of our knowing whether there are any exports, because, as you note, the form simply asks for total quantity and value of shipments. We did not attempt to break out exports.

Q. And do these figures include interplant transfers?

A. Same answer as before, in fact the form says, "Total shipments including interplant transfers." Again we have no way of knowing whether any of the figures on the form, not only conduit, any of the wiring devices figures were shipped between manufacturing establishments of the same company. If they were, they again should be included here.

Q. What is an interplant transfer, Mr. Bernstein, if you know?

A. Let's put it this way, I don't think we directly give a definition. We use what we term standard industry terminology, but our understanding would be a shipment of a product which we are collecting as such on the form, which [fol. 2243] one company would have to be what we call a multi-unit company, a company that has two or more establishments, and it would be shipments of this commodity from one establishment of the company to another establishment of the same company.

Q. And would the product shipped require further processing, if it required further processing, would it have to be included in that category?

A. Not necessarily. The distinction which is made is as to how we request the second establishment, the recipient of the commodities to report, namely—well, part of this, I am an economist and statistician, I am not an electrical expert, but commonsense tells us as to the type of commodity included. For example, something which when it leaves establishment A's door is complete, is usable and is usually used in its form it is in when it leaves that door, if for some marketing purpose they ship it to another establishment of the same company and that company does not do any further manufacturing—he may put it in a package, but we tell the respondent in the report form, this is not assembly, this is not manufacture, if the manufacturer re- [fol. 2244] sells that without further manufacturing, in the total Census of manufacturers, we have a separate line for

re-sales, it is not included in the commodity table in this form here, because we are only interested in commodity detail, not in these general statistics.

The establishment of that company should not report those when he resells them.

On the other hand, if there is further manufacturing, usually speaking, what establishment "A" will report to us may be some part, let's say, which perchance happens to be collected on the same form, if establishment "B" does further processing, usually speaking, when he reports it is on a different line where it has reached a further stage of fabrication, but there are some industries where this makes more sense than in others. I understand in the metals area where somebody sends a casting and somebody else does further fabrication, as far as wiring devices and supplies, I would have no way of knowing whether this would be true or not.

Q. You don't know whether conduit received further processing, you wouldn't know that, would you?

[fol. 2245] A. It depends on what is meant by conduit. If it is conduit, I am not sure what else you can do with it—more conduit?

Mr. Melchior: No further questions. You may examine.

Cross-examination.

By Mr. Bergson:

Q. Mr. Bernsten, would you please look at Government Exhibit 499, which is the reporting form?

A. Yes, sir.

Q. And particularly at those sections relating to the reporting of conduit?

A. Yes, sir.

Q. The form requests a report on rigid conduit, including couplings, nipples, and sets forth—then it breaks it down into steel or other, or electrical metallic tubing, is that right?

A. That is correct.

Q. If you were a manufacturer of aluminum conduit, in which line would you report your aluminum conduit?

A. Well, depending on what kind of conduit it was.

Q. Not electrical metal tubing, but rigid aluminum conduit.

[fol. 2246] A. If it were rigid aluminum conduit it should be reported under Code 3644222, "Other;" if it were aluminum electrical metallic tubing, it should be reported under 3644224, the other line there.

Q. Now, I also notice that you have a classification Code No. 3644236, entitled "Other Electrical Conduit;" what type of conduit, if you were reporting, what type of conduit would you report in that form?

A. Now, let me put it this way. The question, of course, is hypothetical, and I am not in a position as a Census Bureau employee to give a hypothetical answer.

May I backtrack a bit to give you some information?

Q. Yes, all I want to do is clarify it.

A. That is what I am here for. As any Census Bureau employee, as I believe I brought out on direct examination by Mr. Melchior, we are not experts in any commodity field. We cannot be. As I explained before, in my own work there are 95 separate industries with a couple of thousand products and it is a physical impossibility to be an expert. The preparation of a report form is something where we really— [fol. 2247] I will say almost exclusively, we must have some working knowledge of the products with which we deal, but we really almost exclusively rely on the manufacturers of the product involved and the users of the statistics to give us what is the general industry terminology and its best description of the items to be collected.

Now, if you asked me what is included under "Other," the only thing I can do, and without trying to be smart or anything else, is to refer to the report form which, since it was given to us by manufacturers representatives, we must assume has a definitive meaning to the manufacturers, namely, that it includes underground conduit and fitting, molding angles, molding outlet and molding junction boxes.

Q. That says "including," that doesn't say "only"?

A. That is correct. Anything in a parentheses is meant to be—to give an example, an e.g. sort of thing. That is true, it doesn't say "only," I will admit that, but you asked before about rigid conduit. Now, there are two lines for rigid conduit. There are two lines for electrical metal tubing. [fol. 2248] Now, I wouldn't even attempt to tell you whether

there are any other types of conduit—well, there is at least one other, “flexible steel conduit,” I see there is a line for it. Perhaps there is semi-flexible tubing, as far as I know; that would belong in line 236, but a respondent should not, if he is making electrical metal tubing, I can’t see on what basis he could justify—well, put it in 236.

Q. Do you think a manufacturer of conduit other than steel, rigid conduit other than steel, would be in violation of the law, for example, if he reported conduit other than steel under “Other electrical conduit”?

A. Depending on the reason for his doing it. The law states—I am not a lawyer and I don’t have the code in front of me, but the law does state, No. 1, that the Respondent cannot refuse to report, because it is mandatory, 2, nor can he deliberately give false or misleading information. As I tried to bring out before, maybe I wasn’t clear here, the same as we are fallible in our attempt to gain complete coverage of the materials collected here on this form, it [fol. 2249] must be assumed that a respondent is fallible too, and could make a mistake.

Q. I think you or Mr. Melchior used the expression “not properly included”?

A. That is correct. If I may just continue, for example, if someone did not wish it known that he were a manufacturer of one of these products, full well knowing he could hide his figures by burying it in “all others,” this, I will rely on your honor, could be interpreted as deliberate disobedience of the law, but if someone looks at the two lines and perhaps says “I am not sure which one it goes in, I better put it in ‘All others,’” we do specifically say to please contact the Census Bureau if they don’t understand it.

Q. But there is a possibility it might not properly be included for perfectly innocent reason?

A. That is correct.

Q. And I assume that is why you very carefully qualified your statement by saying “not properly”?

A. That is correct.

Q. Now, when the Census got this information it published the current industrial report for wiring devices and supplies for 1960?

[fol. 2250] A. Yes, sir.

Q. Which is Government’s Exhibit 498, right?

A. Yes.

Q. And when the Census published that report, it didn't do what it instructed the reporters to do, did it?

A. What did we instruct the reporters to do that we didn't do?

Q. You instructed the reporters to include, according to your testimony, rigid aluminum conduit in the "Other" category from steel under rigid conduit, is that not right?

A. Not specifically aluminum, we told them "all."

Q. All conduit, but where did you report in the current industrial reports aluminum rigid conduit?

A. We do not report, we publish and by law we are specifically—

Q. (Interrupting) It is called a report and I assumed that it meant what it said.

A. This is more of a technical difference involved, namely, we tell the respondent where to report. Their reporting of figures is based on their honest and best knowledge of which of the figures of which of the commodities they have made in [fol. 2251] quantity, where asked for, and the dollar value in all cases that we ask. We publish the data along the exact same lines. If you will notice, if you have taken the time to check—

Q. (Interrupting) I have.

A. The product stub here is pretty much the same as the product stub as collected on the report form. We published—not reported—published a figure on steel rigid conduit. We have published a figure on steel electrical metallic tubing; we have combined, not that we didn't report it correctly, we have combined the figure on "Other rigid conduit," and "Other metallic electrical tubing," because we are governed by different laws than that of the respondent. The law that governs him, he has to report to the best of his ability. We have another part of the law which says we are prohibited by law from disclosing the operations of individual companies. We had a disclosure on one of the two lines. If we were to publish the figures as reported there was a reasonable chance to pick up the files and say, "XYZ" or "ABC," or "DEF companies made this amount in one of the two lines." We had a choice, we could either withhold [fol. 2252] the figures entirely—but we are not in the business of not publishing figures, we are in the business of pub-

lishing them, or we could combine the figures to at least give market analysts an opportunity to see what the total market of these products were. Therefore, we combined other rigid conduit with other electrical metal tubing, there was no disclosure in the combined figure, and yet we have given a total quantity and value figure. You can add the dollar figures and get the total figure. You cannot get a separate figure on other rigid or other metal tubing because of the disclosure provisions of the law.

[fol. 2253] Q. So as a result aluminum conduit went into electrical metallic tubing rather than in rigid, where you asked for it?

A. No, no, no. It is not in. That figure that you see below—we are talking about two entirely different figures. Let's stick to the dollar figure of 16 million—

Q. I am not talking about money. That is too prosaic to discuss. I am talking about reporting and publishing.

A. We seem to be talking about the same thing.

Q. As I read this form—

A. Report.

Q. —this report which you published, I think you asked for aluminum conduit.

A. We did not ask for aluminum conduit.

Q. Aluminum rigid conduit.

A. We didn't ask for aluminum rigid conduit.

The Court: Wait a minute, witness.

Let's get a question down.

Q. You asked that aluminum rigid conduit be included within other aluminum conduit fittings and rigid conduit; did you not?

A. We asked for non-steel metal to be included.

[fol. 2254] Q. And that includes aluminum, does it not?

A. That is presumably correct.

Q. When you published the figures, however, you published the aluminum rigid figures in a different category; isn't that true?

A. No, sir.

Q. Well, where are the aluminum rigid conduit figures?

A. They are combined with the electrical metallic tubing.

The Court: That is just what he asked you.

The Witness: Well, he says where—maybe I misunderstood the question. We put the footnote in 5 and combined it in EMT. We could have done that the opposite way and put it under other rigid conduit and stuck footnote 5 under EMT. We could have put the footnote on both of them and put the whole figure in that footnote.

Q. You are quarreling with my terminology?

A. I am only familiar with the Census Bureau terminology, not with yours.

[fol. 2255] Q. Let me ask you this, where in the current industrial report is rigid aluminum conduit?

A. It is combined with other electrical metallic tubing.

Q. Now, where was it asked for in the request that you sent out?

A. It was asked for in a separate line by itself, as was the other one.

Q. It was asked for, was it in under rigid conduit steel or other?

The Witness: Your Honor, may I direct a statement to you?

The Court: No, you don't need to. That has been asked and answered five times.

The Witness: That is so, that is what I believe too.

The Court: Then why don't you say so, just say yes.

The Witness: Well, as a Census Bureau employee I am interested in the Court's understanding of what we have done. May I direct something to you?

Mr. Bergson: Sure.

The Court: Yes, but when we get right down to it we can [fol. 2256] get down to a very simple proposition. The difficulty I have is locating rigid aluminum conduit. Well, now it is very plain and I don't see why there is this long harrange.

The Witness: I think—

The Court: Now, wait a minute. You asked for it under rigid conduit.

The Witness: Yes.

The Court: And with this report it is combined with something else so that I can't get it. That is what he is getting at.

The Witness: That is correct.

The Court: There is nothing very complicated about the whole thing as I can see it that requires a lot of explanation.

By Mr. Bergson:

Q. Now, I ask you whether this is not possible in view of the way Census handles these figures, and please believe me that I am not trying to impute anything sinister to the Census and you don't have to defend Census when I ask you this [fol. 2257] question—is it not possible that aluminum conduit or aluminum EMT might possibly have gotten into other electrical conduit on a perfectly innocent basis both on the part of the reporter and on the part of the Census?

A. I answered the question before and answer it again, yes, it is perfectly possible. Not properly so, but possibly so.

Q. I think you said before that they were pretty much accurate is the quote I have.

A. That is correct.

Q. But it is possible that it is erroneous. Now, let me ask you this, the sum, the value that you have for 1960 under this category "other aluminum conduit", which includes ells and junction boxes and so forth, do you have sufficient knowledge of the industry to know that if you exclude all electrical conduit from that total that there would be as much dollar volume of sales of these products to reach the total of 53 million dollars?

A. We have no way of knowing because we collected it as a total figure. We have no way of knowing what portion of that is any of the figures, is any of the products included within the parentheses.

[fol. 2258] Q. You said also that in preparing this reporting form you discussed this form with representatives of NEMA.

A. That is correct.

Q. Do you recall how the form came about, I mean this special industrial report came about?

A. As I recall, we were specifically requested by the National Electrical Manufacturers Association to institute a current program in the wiring devices and supply field.

The Court: Take a short recess.

(At this point a recess was taken after which the trial was continued.)

By Mr. Bergson:

Q. Mr. Bernstein, are you familiar with the term "basket category" as referred to in Census statistics?

A. Yes, in the sense that I heard it. We do not use it ourselves, but others have. It usually applies to a category wherein the product will appear the word "other" or "all other."

Q. Would you consider this other electrical conduit category on current industrial report, government Exhibit 498, to be such category?

[fol. 2259] A. I repeat, we do not use the term "basket" but this would be, I think I can truthfully say, the type of category that those who use the statistics apply the category.

Q. The amount involved in the category is somewhat over 53 million dollars.

A. Fifty-three, two hundred and forty-one for 1960.

Q. Isn't that an unusually large amount to have in a category of that kind?

A. No, sir. May I make one point?

Q. Yes.

A. If you will notice the fifty-three, two forty-one is a combination of two lines.

Q. Yes.

A. One the "other electrical conduit." The second line being the "fittings" line.

Now there is a disclosure problem again here, and if you will notice here since the two lines one immediately follow the other, we used a different technique than we previously used. Here we simply use a bracket to show the two figures together. This is a technique we would have used earlier if the disclosure even had been the same thing. We have [fol. 2260] no way of knowing how much that 53 million is, as you term "basket" as against the fittings figure. Even taking the two combined, now this 53 million, we would compare that generally speaking, sir, with the figures within the same class of products, namely the electrical conduit and fittings. Roughly we have '83 and 27, about 110, 126, 142, 152, out of a total of over 200 million dollars some portion

of 53 million is the basket "other." And I repeat I use the term "some portion" because it has fittings which go with the conduit. This would not be an abnormally large figure.

Q. This is just to clarify my own thinking on this line. Electrical conduit and fittings NSK, is that included within the products?

A. No, the three dots are standard Census symbol for this—may I give an explanation?

Q. Yes.

A. Basically the explanation is in footnote 3, which is on the '58 data. Perhaps this is not entirely clear in the complete Census of Manufactures where we have canvassed every known manufacturer, the Census form does not only deal with commodity data as before, but all different types [fol. 2261] of data, such as employment size, man hours, production workers, wages, materials, semi-metallic workers, operation et cetera. It is a rather large form and a detailed one. We have found through consultation and advice of users and different manufacturers who must supply the data and other government agencies, that there is a question that the large form imposes somewhat of a burden on very small manufacturers because of their limited facilities. In addition to which the amount of detail which they can report, generally speaking, because they are so small is not going to add anything which is statistically significant to a separate line item. So what we do, we know what industry they are classified in through the BOASI records. We send them a so-called Census short form. This form is only one page. The form will just list total employment without getting a detailed breakdown by quota of production workers for example. It will list the classes of products he makes. For example, he can put down that he makes so many thousands of dollars of electrical conduit. The term "NSK" is a short form "not specified by kind."

As you notice for that whole class of products, for the [fol. 2262] year 1958, the short form respondent amounted to five million dollars, as the footnote says, these products reported as NSK by small establishments which did not have an opportunity to report in detail the statistics required of larger establishments because they didn't receive the form with all the many lines on it.

However, when we go to an annual commodity survey, in

our current industrial report series, where only information we ask is commodity data for these other statistics, we feel that it is not a burden on him to put on the proper line his dollar value. Therefore, going backwards, in 1960 these smaller respondents didn't have an opportunity to report NSK. They had to put their figures on the specific lines. Therefore, for comparison purposes of the whole class of products, the NSK is necessary to show in '58 when you attempt to compare the figures of '58 and '60.

However, there are other NSK categories and you will notice all of them have the three dots for 1960. Their figures are distributed within the category.

Q. I think you testified that among the trade associations [fol. 2263] that you consulted in regard to this form—what is it?

A. MA-36-K.

Q. MA-36-K, was the National Electrical Manufacturers Association.

A. That is correct.

Q. Do you know whether or not you discussed with them the conduit portions of the form?

A. At the meeting, a joint meeting held between the Census Bureau and representatives of NEMA, the question of the whole proposed report form including the lines on conduit as well as every other line, these questions were brought up. Just drawing from memory, I do believe at the meeting the Association said that there was no one present at the meeting from their association—the words were something like “who felt competent to comment at the fiscal meeting on the particular lines”—they did say, however, that in time for us to submit the report form to the Bureau of the Budget they would comment one way or the other in writing. And then after that a letter was received, I believe signed by Mr. A. J. Nesti, who was chief statistician of NEMA, to the effect that they had no objection to the other [fol. 2263a] sections of the form which were not specifically discussed at the meeting.

[fol. 2264] Q. The other section of the form?

A. Yes. I believe not only was conduit an area where the NEMA representative did not feel competent to discuss with us, but I believe there were one or two others. But from memory, I don't remember exactly what it was,

and when we had asked for the joint meeting, it was specifically for the purposes of discussing the whole form. As I recall, through some—I don't know what it was, we sent them a copy of the proposed report form which included conduit and other areas, but I think someone read the letter without referring to the report form we sent them and the explanation we got, and I believe they misunderstood, they saw wiring devices and didn't realize it included everything in wiring devices, which appears to mean they didn't look at the form we had attached to the letter.

Q. Do you know whether or not there were any changes on the form after that meeting?

A. The differences in the form between 1958 and 1960 I could not pinpoint as to where they came from. There were differences, as I pointed out before, in conduit, namely, for 1960 we were requested to break out steel and "other" [fol. 2265] for both rigid and EMT. I believe these suggestions were made by BDSA, the other government agency I referred to before.

Again, if my memory serves me as to NEMA not specifically commenting at the meeting on conduit the changes in conduit did not come about as part of their review, obviously. I believe there were one or two other changes in the report, but as to whether they were specifically NEMA recommendations, those details I don't have, and that detailed a set of notes we don't keep.

Q. Did the Census publish statistics for conduit in 1958?

A. Well, at the risk of getting into a misunderstanding again, let me say yes and no. We collected conduit figures, we had a disclosure problem and we combined them with an "all other" category. It is included but not as a separate line. Does that answer your question?

Q. There is no publication of conduit figures.

A. If I can just look to make sure—that's correct, I see in the Footnote 4—I take that back, there were figures on conduit. For example, the flexible steel and the raceways, [fol. 2266] there were no figures on the rigid or the EMT, which were more in discussion, no separate figures, that's correct.

Q. Now, Mr. Bernstein, you said you get your information as to companies from the Bureau of Old Age Survivors and Survivors Insurance, among other sources?

A. That's correct. This is mainly a check on existing mailing lists.

The Court: Yes, he did. Go ahead.

By Mr. Bergson:

Q. If a company were listed at the Bureau of Old Age Survivors, or on your previous Census forms as an extruder of aluminum shapes or aluminum pipes, would he necessarily get a form for conduit?

A. Not necessarily. May I expand my answer?

Q. Certainly.

The Court: Yes, but don't make these explanations so long. These questions are rather simple.

The Witness: There is a chance the answer might not be as simple as the question. In these types of surveys, these are commodity surveys and we are therefore interested in collecting data on people who specifically manufacture items [fol. 2267] line by line. Therefore, it is not just a man's classification as to what he does as a major product, but does he specifically manufacture items here. For example, when we went to the Census list we have line by line anyone who manufactures any of these products in the 1958 Census, whether that man was primarily a wiring device manufacturer or an aluminum extruder, if he made these even as a second product, we got him. But as an extruder of aluminum, I think somebody mentioned 34, as such, he doesn't necessarily get one. If he reported to us he shipped conduit, he would get a form.

Q. If a man reported to Census or a company reported to Census as an extruder of aluminum shapes or pipes for the 1958 Census, and sometime between 1958 and 1960, began to fabricate aluminum conduit, would he necessarily get one of these MA36K reports?

A. If he was selected in the supplemental annual survey of manufacturers, where again he has to put down his specific class of products, and we match the annual survey against the reporters on the commodity survey, yes; if he was non-select in the annual survey of manufacturers, no.

[fol. 2268] Q. Supposing in the annual survey of manufacturers he said he was an extruder of aluminum pipe.

A. This is not what he would say. There is a specific product section. He gets a book with an alphabetical listing of all products, and a code to put down in a specific item on the annual survey. Any extrusion of aluminum would have a code of thirty-four something. If, in addition, say, 1959 or 1960 or 1961, he looks and he sees "conduit," he would put down "conduit," and it would have the code 36442. Or he might not even put down—some people only put down "conduit," and neglect to put in the code; some only put the code and neglect to put the description, but we match it.

Q. If, in the 1959 report, he just said, didn't say conduit because he wasn't manufacturing conduit in 1959, would he get the 1960 request?

A. Going back over your other assumptions, no, he would not. But if he then in 1960 would—

The Court: You don't need all of that, Witness. The question was a very simple one. He would get it. What is your opinion? Your opinion was no.

[fol. 2269] The Witness: That is correct.

The Court: All right.

By Mr. Bergson:

Q. And I suppose the same would be true of a fabricator of steel pipe?

A. That is correct.

Q. Now, Mr. Bernsten, would you tell the Court—I don't want you to violate any disclosure problems that exist under the Census Act, and I don't want to embarrass you or myself by asking that kind of a question, but in the current industrial report, which is Government's Exhibit 498, which was released on October 19, 1961, you had a figure for conduit and EMT which totaled \$120,367,000. This is the total in Government exhibit, the conduit, is that correct?

A. We did not publish subtotals. It looks like that figure would be correct, sir.

Q. Right. Now, subsequently, on February 1, 1962, by letter from the Director of the Census to Mr. Loevinger, the Assistant Attorney General, which is Government Exhibit 496, you increased the total to \$125,707,000; how did that

come about, not the exchange of correspondence but how did the increase in numbers come about?

[fol. 2270] A. Well, correspondence has something to do with it, because there was a prior letter from Mr. Loevinger explaining these figures, the original ones would be entered in as evidence and asking whether there would be a possibility of any revisions. This is important, because normally—

The Court: How did the change come about, is the only question.

The Witness: As a result of the request made by Mr. Loevinger, we, ahead of time, made a review of the report submitted on 36K, against reports submitted on the annual survey of manufacturers that we described before, and made the check against the BOASI record and in so doing we noticed a combination of discrepancies in figures reported to us on the one survey as against the other, and the two should have been the same, plus people from BOASI listed people as having come into the production, at least in the general industry, and we initiated telephone correspondence, verified in one case the change in figures. In the other cases, these people were now in and subsequently we [fol. 2271] sent by letter what these figures would be.

Q. Did the Department or Mr. Loevinger indicate there was any need for haste for getting these figures in?

A. Well, his letter says: "Specifically the Government has used these totals, since the Government is relying on these figures in this litigation and since the trial of the case commences on February 5—" his letter is dated January 30, by the way, "We would appreciate your advising us as soon as possible whether the figures for the value of shipments of these products have been revised subsequent to their publication in 1961, and if so, the changes which have been made."

Q. You had already told him orally, or had you already told him orally, in response to their oral request you had checked and found certain revisions were necessary?

A. I hadn't, I am not aware of anyone at the Bureau having done so. I believe it was only by letter, sir.

Q. Is it possible that in the haste to meet the February 5

deadline, that you might not have picked up all the discrepancies that there were?

A. That was a possibility, but subsequent to that we have rechecked at our leisure and the figures are as reported, as revised in the letter.

Q. And this at your leisure was reaffirmed in the letter of February 13?

A. That is correct. I believe the letter specifically indicates the company accounts published there refer to the revised figures.

Q. And it refers to reports received from all known producers?

A. That is correct.

Q. Now, I suppose that was put in against the possibility that there might be some unknown producers?

A. I believe it was worded that way because it is standard terminology. Obviously, we can only have reports from all known producers.

Q. Now, Mr. Bernstein, is there any way without running into the disclosure problem of taking the Census total of 125,907,000, which is the amount now referred to in the Government Chart 455, and breaking out of there into plant transfers, foreign shipments or "Other"?

A. No, sir. The problem is not disclosure, the problem is [fol. 2273] simply the figures as collected were total shipments. We did not ask for a breakout of interplant transfers.

Q. Would you have any way of knowing whether the total of interplant transfers, foreign shipments and other factors would result in a difference of, say, eight to ten million dollars in the Census figures?

A. No, sir, no way. If we don't have the figures on the exports specifically of these products or the interplant transfers, there is no way to do it, and we don't guess.

Q. Mr. Nesti, to whom you have referred, testified that NEMA figures did not include interplant transfers, foreign, and when I say "Others" I mean sales within an organization, was \$116,697,000 for those companies reporting to NEMA. If those figures—and he said that those figures were incomplete because there were companies that did not report to NEMA—if you broke out interplant transfers or foreign shipments, other shipments from your Census total, and you came close to the 116,000,000 of NEMA, would you

as a statistician—is that your profession—say that the census figures would be subject to the same infirmity that [fol. 2274] the NEMA figures would be subject to?

A. Two points, one, I am not in a position to comment upon NEMA statistics; number 2, I was called as a witness for the Census Bureau, not for my own personal opinion. As a Census Bureau employee, again we will stand behind the figures that we published. Mr. Nesti, if he wishes to downgrade his statistics, that is his province. Whatever our final figures would show, and this is reiterated in the letter, we have confidence in them and we stand behind them. We feel that they are the best and most complete coverage possible of the items in question, no matter what the figures show.

Q. The best you are able to do under the circumstances?

A. Best as the largest statistical collecting agency in the world is able to do, yes, sir.

Q. Now, is this the first year, this 1960, the first year that the current industrial report was published for wiring devices?

A. Published in 1961 covering 1960, yes, sir.

Q. Is it customary or do you find in the performance of your duties that when you put out a new reporting form that you don't hit it right on the head the first year?

[fol. 2275] A. No more so than a survey that is being conducted for ten or twenty years.

Q. You feel you have as accurate results when you first start a new survey as you have after you have had the survey in effect ten or twenty years?

A. Yes, because the same care is taken to insure the complete coverage of respondents. We try not to get careless with one that is running for twenty years and we are as careful about a new one.

Q. Don't you find over the years that on occasions industrial representatives have pointed out discrepancies and that you have adjusted for those discrepancies?

A. I do not recall ever a discrepancy as such pointed out. As I pointed out before, I have only been with the Bureau a little over two years, but from reading through correspondence in the Census Bureau, I don't recall the Census ever revising a figure because a respondent has said the figure has been wrong. We have in our careful review re-

vised figures, but again, even though this is true and we are willing to state it for the record, there is no ratio that is higher on the first year than it is on the tenth year.

[fol. 2276] Q. Didn't you find a five million dollar discrepancy in this year?

A. We did not find a five million dollar discrepancy. As I pointed out before, the review of this was done earlier than would be normal Census procedure because of the request. This would have been picked up and published as part of the 1961 report, because this same careful review would have taken place in preparation for the 1961 report where we also show 1960 data revised when necessary.

Q. Getting away from the conduit now, how are industry classifications set up, are they set up in consultation with members of the industry?

A. Yes. Here I can only give you some hearsay. The Standard Industrial Manual, the product of the Budget Bureau as such, which consults with all users of statistics and all producers of statistics.

Q. And the statistics are furnished for the benefit of manufacturers in the conduct of their business, among other things.

A. Yes.

Q. And if they are interested in having particular things [fol. 2277] broken out, they will be broken out provided no disclosure problem is involved; is that right?

A. If feasible within the resources of the agency providing the figure. We will not simply because someone requests us to break it out, break it out. We have to have some evidence that the effort involved in breaking out the figure will result in the publication of a figure which has significance to general users.

Q. Now, I know you testified as to the area of your responsibility, and I don't know that you testified—I probably do know that you testified that wire and cable is not within your area of responsibility.

A. That is correct, sir.

Q. However, you do have certain knowledge of the Census procedures?

A. Yes, sir.

Q. Now, I show you Defendants' AR-9, which is the 1958

Census of manufacture for non-ferrous metal mill and foundry products.

A. That's correct.

Q. And I invite your attention to page 33D22, the bottom part of the page, and 32D33. These tables refer to ship- [fol. 2278] ments of insulated wire and cable?

A. Yes, sir.

Q. Do you find any distinction in those tables between wire and cable using aluminum as a conductor on the one hand and copper as the conductor on the other hand?

A. I beg the Court's indulgence since I had nothing to do with the preparation of this, and to be fair, I am checking it through line by line to make sure I don't miss anything. I do not see any reference to aluminum or, I believe you said copper?

Q. Right.

A. That's correct.

Q. Now, however, there are breakdowns in some of these products. Take, for example, weatherproof, between braided, neoprene and thermoplastic covered, is that right?

A. Not exactly, as braided, then there is polycloroprene.

Q. Which is neoprene?

A. There is others which includes thermoplastic covered, which under Census procedure this is an example.

Q. Inviting your attention to service cable, there is a [fol. 2279] breakdown between rubber and thermoplastic insulated?

A. Yes.

Q. Now, would this indicate to you that the manufacturers in this industry were not concerned with whether or not the conductor metal was copper or aluminum?

Mr. Melchior: Your Honor, I think I am going to have to object to this line of testimony. The witness has stated he is not familiar with this particular part of the Census report and it exceeds the direct.

The Court: If he can't answer, he can say so. Overruled.

The Witness: I cannot answer that question.

By Mr. Bergson:

Q. I will ask you this question, does the fact that it is broken down say, for service cable, between rubber and

neoprene, or thermoplastic insulated, indicate that the manufacturers in that industry are interested in statistics for rubber insulated cable and thermoplastic insulated cable?

A. I cannot answer that because I do not know who was [fol. 2279a] consulted on this, government, industry or who.

Mr. Bergson: No further questions.

The Court: All right. Redirect examination.

[fol. 2280] Mr. Melchior: I just have a few questions.

Redirect examination.

By Mr. Melchior:

Q. Mr. Bernsten, I would like to clarify one point that you were examined on in cross. I direct your attention to government Exhibit 498, which is a report.

A. The release itself.

Q. This is a report. Now, when the Bureau collected this information on government Exhibit 499, as I recall your testimony on direct, it collected it under, in four different categories, as far as conduit is concerned, under rigid conduit it collected it as steel and other?

A. That is correct.

Q. And as EMT it collected it as steel and other?

A. That is correct, sir.

Q. And then when you put out your report all you really did was to take "other rigid" and "other EMT" and added them together?

A. Yes, sir.

[fol. 2281] Q. And the only reason you did this was to prevent a disclosure of some individuals, or the possible disclosure of some individual's participation; is that right?

A. That is correct, sir.

Q. In other words, in one of those fields there were so few companies involved that it was possible to determine someone's shipments?

A. It might be possible.

Q. Might be possible, that's right. And therefore through a super abundance of caution you decided to combine them.

A. That is correct.

Q. Now, you were asked on cross-examination about pos-

sible confusion on the part of companies who are required to submit this form. Now, as a matter of fact, from time to time do members of the industry who are required to fill out these forms call the Bureau of Census for assistance in filling out this form? This is the usual occurrence, isn't it?

A. Yes.

Q. Members of the industry are aware that they can call the Bureau for assistance?

[fol. 2282] Mr. Melchior: That is all.

Recross-examination.

By Mr. Bergson:

Q. I just want to ask one question. How many ~~companies~~ or how few companies must there be in an industry to present a disclosure problem?

A. I am not free to answer that question.

Mr. Bergson: You are not free to answer that. No further questions.

The Court: Witness, what my trouble is here, and I am going to have to determine as a line of commerce aluminum conduit, rigid aluminum conduit, I think. Can you, do these two exhibits that we have been talking about help me to determine the amount of aluminum conduit in any particular year?

The Witness: No sir. The only thing it tells you is the total of other than steel metallic conduit, sir.

The Court: Okay. All right.

Mr. Melchior: No further questions.

(Witness excused.)

[fol. 2283] OFFERS IN EVIDENCE AND COLLOQUY THEREON.

Mr. Melchior: May it please the Court, the government has two or three documents it wishes to offer. I would like to have marked for identification Government Exhibit 501.

(Final judgment in the case of United States versus Standard Oil Company of New Jersey et al marked as Government Exhibit 501 for identification.)

Mr. Melchior: Government's Exhibit 501 for identification is the final judgment in the case of United States versus Standard Oil Company of New Jersey et al in the United States District Court for the Western District of Kentucky. I offer it.

Mr. Bergson: You certainly may, I have no objection.

The Court: Received.

(Government's Exhibit 501 for identification received in evidence.)

Mr. Melchior: I would like this marked.

(Directory of Aluminum Suppliers marked as Government's [fol. 2284] Exhibit 503 for identification.)

Mr. Melchior: I offer at this time Government's Exhibit 503 for identification. This is a directory of aluminum suppliers put out by Business and Defense Services Administration, United States Department of Commerce, as revised December 15, 1959.

Mr. Bergson: No objection.

The Court: Received.

(Government's Exhibit 503 for identification received in evidence.)

(Newspaper clipping from the New York Times dated March 1, 1962 marked as Government's Exhibit 504 for identification.)

Mr. Melchior: I offer at this time Government's Exhibit 504 for identification, which is a newspaper clipping from the New York Times dated today, March 1, 1962, and the article is entitled "Two metals producers cancel their plans for joint aluminum plants." I offer that at this time.

Mr. Bergson: Your Honor, I am getting soft. I am not [fol. 2285] going to object.

The Court: I was going to offer the one that was in my room the other day. That was the Wall Street Journal.

Mr. Melchior: The New York Times.

The Court: No, the one they sent me was from the Wall Street Journal.

Mr. Bergson: The one that said independents were the price cutters.

The Court: Yes. I will take it.

Mr. Melchior: Is that received, your Honor?

The Court: Yes.

(Government's Exhibit 504 for identification received in evidence.)

Mr. Melchior: Now I would like to reoffer at this time, your Honor, government's exhibits for identification 473 to 491, excluding government exhibit for identification 478. These documents, as your Honor will recall, are documents which were secured by discovery in another proceeding from the defendant Alcoa and they relate to four different real estate projects, to wit the Mansion House redevelopment [fol. 2286] project in St. Louis, a project in which Alcoa loaned certain monies; the Ebbett's field project in Brooklyn, in which Alcoa loaned certain monies to the Kratter Corporation, and in connection with the third project entitled "The Olympia Project" in New Jersey, we believe Monmouth, New Jersey, and finally the Century City project in which Alcoa participated with Webb and Knapp. We offer these on the ground that a reading of these documents will generally disclose the practice utilized not only by Alcoa but certain other integrated aluminum producers in attempting to insure that their own aluminum made products are utilized in these projects to the exclusion of similar products made by their non-integrated competitors. We believe that these are highly relevant in a proceeding of this type.

Mr. Bergson: I object, your Honor, for the reasons stated before plus the fact that this is not proper rebuttal.

[fol. 2287] The Court: I will sustain the objection.

Mr. Melchior: If it may please the Court, the government would like then to make an offer of proof and read it into the record.

Mr. Bergson: Your Honor, I think it is improper to make an offer of proof at this time.

The Court: These exhibits have been offered and rejected. What you are doing is getting them into the record anyway.

Mr. Melchior: I would like to read into the record what the documents would show if admitted.

The Court: You already told us what they were.

Mr. Melchior: Then that would be a sufficient offer of

proof. I wouldn't read from the documents. I did have a little more complete statement as to what we think the documents would show.

Mr. Bergson: I object to it.

[fol. 2288] The Court: All that that is is you are summarizing something and getting it into the record. The objection is sustained. I looked at them and I don't think they are relevant. I think we are going very far afield. I sustain the objection.

Mr. Bergson: Your Honor, I think I have always been taught not to argue when I have been sustained. I do think I ought to have on the record this additional fact, that after you sustained the objection before we had here testifying the executive vice president for Alcoa, Mr. Hickman, who could have been interrogated regarding these documents by the government if he so chose, and we would have a chance to answer any inference that he might have tried to draw from them. Consequently, I think that the plaintiff forfeited his opportunity to even make an offer of proof in this situation.

The Court: Well, I will sustain it.

Mr. Melchior: I would like to make a comment on counsel's remarks if I may, your Honor. These documents relate to officers and officials other than the said Mr. Hickman, and the direct examination of Mr. Hickman sorely limited an opportunity to examine him with respect to any of the pertinent documents herein.

The Court: Did you try?

Mr. Melchior: I beg your pardon?

The Court: You didn't try to examine him on any of the documents.

Mr. Melchior: I didn't think it was appropriate.

The Court: Don't say you were limited. I think when Mr. Bergson got through somebody said "no cross."

Mr. Bergson: I think the record will show that in many instances in the trial of this case the cross went well beyond the direct on both sides.

The Court: Yes. I didn't hold you down at any time, even on incompetent evidence.

Mr. Bergson: Your Honor, I have a document that I [fol. 2290] want to offer.

The Court: I may go out and pick up a few myself.

Mr. Bergson: Off the record.

(Discussion off the record.)

Mr. Bergson: I would like to offer as defendant's Exhibit AR-84 a statement of Clarence W. Higbee representing the import committee of the wire and cable division of the National Electrical Manufacturers Association on February 28, 1962. This document, your Honor, discusses the problems that the manufacturers of wire and cable face, or feel that they face, so far as foreign imports are concerned.

The Court: All right.

Mr. Melchior: No objection.

The Court: Received.

(Defendant's Exhibit AR-84 marked received in evidence.)

BOTH SIDES REST

The Court: Now both sides rest?

Mr. Melchior: Government rests, your Honor.

The Court: Government rests. Do the defendants rest?

[fol. 2291] Mr. Bergson: Defendants rest.

The Court: All right, motions.

Do you want to make a motion?

MOTION FOR A JUDGMENT FOR DEFENDANT'S, ETC.

Mr. Bergson: Yes. I would like to move for a judgment for the defendants on the grounds that the plaintiff has failed to prove its cause of action.

The Court: I will reserve decision. All right, I guess this finishes this lawsuit.

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Bergson: Your Honor, I think it might be appropriate at this time, if you care to take a moment or two, to discuss the scheduling that we agreed upon.

The Court: Yes. It would be a good thing to get that into the record. Have you got it?

Mr. Melchior: We have prepared a memorandum of understanding which counsel are fully in agreement on,

as I understand it, with the possible exception of the date of the hearing.

The Court: All right. Do you want to put it into the [fol. 2292] record?

Mr. Melchior: We can read it into the record.

The Court: Yes.

Mr. Melchior: (Reading) Memorandum of understanding as follows: By April 16, 1962 the plaintiff's proposed findings of fact and conclusions of law and the plaintiff's post-trial brief will be due.

On May 1, 1962 the defendants' proposed findings of fact and conclusions of law and the defendants' post-trial brief will be due.

On May 15, 1962 plaintiff's comments on defendants' proposed findings of fact and conclusions of law or plaintiff's counter proposals thereupon and plaintiff's reply post-trial brief if desired will be due.

The Court: That is agreeable to you gentlemen, that time schedule?

Mr. Bergson: Perfectly agreeable, your Honor.

The Court: All right.

[fol. 2293] Mr. Bergson: Do you think it advisable at this time, your Honor, to set a time for argument?

The Court: No. Number one, so many things happen that in my informal talk with counsel last night I said that I would like to have this submitted to me around June 1st, because I don't think I can do much with it before that time. After this May 15th, which is the last date on your memorandum of understanding, then I will as soon as I get a chance look over what you have submitted, deciding whether or not argument is necessary, and then communicate with you to fix a date for that argument. I would like to make it myself, if I am not engaged in trial somewhere, sometime between May 15th and June 1st.

Mr. Bergson: This would be entirely agreeable to us, your Honor. The one thought that we have, and of course we don't know how extensive an argument your Honor would like, but we think it might be desirable if two days would be set aside for argument.

[fol. 2294] Mr. Melchior: This would be agreeable to us.

The Court: All I am going to tell you is my own experience. You don't need this on the record.

(Discussion off the record.)

The Court: Gentlemen, it is my understanding that you gentlemen are going to file your exhibits with the clerk and are going to do it—

Mr. Bergson: Today. We are ready to do it now.

Mr. Melchior: Yes, today. Yes, sir.

The Court: All right. I think it would be very helpful if you have the manpower or stenographic power or ability to give a list of those exhibits that you file to the clerk, so he will know what he is supposed to have. I am going to leave that with you. You will be around here this afternoon.

Mr. Melchior: Sure. I will take care of it.

[fol. 2294a] The Court: I will be around. I have some other matters to take care of this afternoon.

(Whereupon, at 1:00 p.m. the case was considered closed.)

[fols. 3367-3403] IN UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT OF NEW YORK

Civil No. 8030

UNITED STATES OF AMERICA, Plaintiff,

v.

ALUMINUM COMPANY OF AMERICA AND ROME CABLE
CORPORATION, Defendants.

[fol. 3404] Interrogatories 6, 7, and 9

6. State the wire and cable products (by product code numbers as reported for the 1958 Census of Manufacturers) manufactured by Alcoa, Rome or others, constituting:

- (a) overhead transmission and distribution lines carrying electric power from a generating plant to a house or other building constituting a consuming unit;
- (b) underground transmission and distribution lines carrying electric power from a generating plant to a house or other building constituting a consuming unit;
- (c) other transmission and distribution lines carrying electric power from a generating plant to a house or other building constituting a consuming unit.

7. With respect to each of the products listed in response to Interrogatory No. 6 state whether such product is used solely for:

- (a) overhead (i) transmission, (ii) distribution or (iii) both;
- (b) underground (i) transmission, (ii) distribution or (iii) both;
- (c) other (i) transmission or (ii) distribution.

If any such product is not solely used in any one of the above categories, state its various uses and the extent of each.

9. State, which of the products, listed in response to Interrogatory No. 6, which in 1958, or in the first three months of 1959, were sold:

- (a) by Alcoa;
- (b) by Rome.

Answers to Interrogatories 6, 7, and 9

The following table identifies wire and cable products as requested in Interrogatory 6, being broken down between subdivisions (a) and (b) thereof. We know of no products falling within the description of subdivision (c). The use of each product, requested in Interrogatory 7, is shown [fol. 3405] under the heading "Function." It is impossible to make a firm distinction between products used solely for transmission and products used solely for distribution. For the purpose of answering Interrogatory 7, we have classified as used for distribution, products designed for voltages of 22KV and lower, and as used for transmission, products designed for voltages above 22KV. It should be noted, however, that in some instances distribution of power may be at voltages higher than 22KV, while power may be transmitted at voltages below 22KV. In the table, Interrogatory 9 is answered by showing under the heading "Sold By," whether the product was sold by Alcoa, by Rome, by both or by neither.

(a) Products Used for Overhead Transmission and Distribution Lines

| Census Product | Census Code | Function | Sold By |
|-------------------------------------------------------------------------------------------------|-------------|--------------|---------|
| Copper Wire and Cable | | | |
| Copper wire, bare and tinned for electrical transmission..... | 33923-11-4 | Distribution | Rome |
| Copper Base Alloy wire for electrical transmission..... | 33923-51-8 | Distribution | Neither |
| Copper strand and cable, except insulated..... | 33923-71-0 | Both | Rome |
| Wire rope, cable and strand (except insulated) | | | |
| Aluminum Cable—steel reinforced (ACSR) and other bare aluminum cable..... | 34892-61-1 | Both | Both |
| Weatherproof and Slow Burning Wire | | | |
| Braided (includes Slow Burning)..... | 36312-31-7 | Distribution | Rome |
| Polychloroprene (Neoprene) covered..... | 36312-37-5 | Distribution | Both |
| Other (includes Thermoplastic covered, etc.)..... | 36132-39-1 | Both | Both |
| [fol. 3406] | | | |
| Building Wire and Cable (having Underwriters' labels) except varnished cambric insulated | | | |
| Service Cable (includes self-supporting type but excludes Service Entrance Cable) | | | |
| Thermoplastic insulated..... | 36312-45-0 | Distribution | Both |
| Rubber..... | 36312-44-7 | Distribution | Both |
| Power Wire & Cable 601 Volts and Higher | | | |
| Varnished Cambric Insulated..... | 36312-63-6 | Footnote (1) | Neither |
| Paper Insulated..... | 36312-65-2 | Footnote (2) | Neither |
| Rubber Insulated..... | 36312-67-8 | Footnote (1) | Rome |
| Thermoplastic..... | 36312-68-1 | Footnote (3) | Rome |

[Footnotes on page 1198]

(b) Products Used for Underground Transmission and Distribution Lines

| Census Product | Census Code | Function | Sold By |
|-------------------------------------------------------------------------------------------------|-------------|--------------|---------|
| Building Wire and Cable (having Underwriters' labels) except varnished cambric insulated | | | |
| Rubber insulated fibrous covered and/or Neoprene jacketed (includes lead covered)..... | 36312-41-8 | Footnote (4) | Rome |
| Thermoplastic (no braid)..... | 36312-48-9 | Footnote (4) | Rome |
| Service Entrance Cable..... | 36312-46-3 | Distribution | Rome |
| Power Wire & Cable 601 Volts and Higher | | | |
| Varnished Cambric Insulated... | 36312-63-6 | Footnote (1) | Neither |
| Paper Insulated..... | 36312-65-2 | Footnote (2) | Neither |
| Rubber Insulated..... | 36312-67-8 | Footnote (1) | Rome |
| Thermoplastic..... | 36312-68-1 | Footnote (3) | Rome |

[fols. 3407-3454]

(1) To the best of our information and belief, varnished cambric insulated power cable (36312-63-6) and rubber insulated power cable (36312-67-8) are predominately used for distribution of power within buildings, in motor leads, ship-board wiring and equipment wiring. These products are used to a lesser extent for the distribution of electric power to consuming units.

(2) To the best of our information and belief, paper insulated power cable (36312-65-2) is used primarily for the transmission and distribution of electric power from generating plants to consuming units. To a lesser extent, it is also used for the distribution of power within industrial plants.

(3) To the best of our information and belief, thermoplastic power cable (36312-68-1) is predominately used for the distribution of electric power to consuming units. To a lesser extent, it is also used for the distribution of power within buildings and in the other applications noted in footnote (1).⁵

(4) To the best of our information and belief, rubber covered building wire (36312-41-8) and thermoplastic covered building wire (36312-48-9) are predominately used in the wiring of buildings. To a lesser extent, they are also used in conduit as services to buildings.

[fol. 3455]

Interrogatory 16

16. With respect to each item of machinery and equipment in the Rome plant at the date of the acquisition, used in the manufacture, fabrication or processing the products listed below state (i) whether prior to the acquisition it was allocated, and (ii) whether it now is allocated,

- (a) solely for copper;
- (b) solely for aluminum; or
- (c) for both aluminum and copper, and, if, for both, specify the comparative extent of the use for aluminum and the use for copper:

- (1) ACSR
- (2) bare wire
- (3) bare cable
- (4) weatherproof wire and cable
- (5) service drop cable
- (6) each other insulated wire or cable product.

Answer to Interrogatory 16

The attached tabulation shows whether each item of machinery and equipment in the Rome plant both before and after the date of the acquisition, used in the production of electrical wire and cable products, was allocated solely for copper, solely for aluminum, or was utilized for both aluminum and copper. To the extent possible, where an item of machinery or equipment was or is utilized for both aluminum and copper, we have specified the extent of use in making the listed electrical wire and cable products with copper or with aluminum as the electrical conductor. For the most part, it has not been possible to make the refined breakdown requested since each item of machinery or equipment is used in connection with the manufacture of many different types of electrical wire and cable products. Where existing records do not permit a breakdown according to specific products, we have used the notation "unable to isolate production types." Certain machines have been grouped together be- [fol. 3456] cause the available data does not show the extent to which any one of these functionally equivalent machines has been used for aluminum or for copper.

QUESTION #16

| MACHINERY OR EQUIPMENT | Prior to Acquisition | | | | Now | | | |
|--------------------------------------------------|-------------------------|------------------------|-----------------------------------------------|------------|-------------------------|------------------------|-----------------------------------------------|------------|
| | (a) Solely Copper | (b) Solely Alum. | (c) No allo- cation. Can run both | % Util. | (a) Solely Copper | (b) Solely Alum. | (c) No allo- cation. Can run both | % Util. |
| 23-04 Elevator supply 11 die and drawing mch. | | X | | | | X | | |
| 23-30 12 cradle 22" Watson strander) | | | | | | | | |
| 38-01 7 wire Larmuth type) | | Alum. | | | | Alum. | | |
| strander 22") | | (1) ACSR | 7.5% | | | (1) ACSR | 3.8% | |
| 38-02 42 wire Watson rigid) | | (2) Bare W. | 0 | | | (2) Bare W. | 0 | |
| frame 22" strander) | | (3) Bare Cable | 6.0% | | | (3) Bare Cable | .4% | |
| 38-03 12 wire Larmuth type) | | (4) Line W. | 7.0% | | | (4) Line W. | 4.6% | |
| 22" strander) | | (5) Drop W. | 14.4% | | | (5) Drop W. | 15.4% | |
| 38-04 12 wire Larmuth type) | | (6) Other | 3.1% | | | (6) Other | 4.8% | |
| 22" strander) | | TOTAL | 38.0% | | | TOTAL | 29.0% | |
| 38-05 12 wire Larmuth type) | | Copper | 62.1% | | | Copper | 71.0% | |
| 22" strander) | | Unable to isolate | | | | Unable to isolate | | |
| 38-06 12 wire Larmuth type) | | production types | | | | production types | | |
| 22" strander) | | | | | | | | |
| 23-35 Synagro drawing mch. | | X | | | | X | | |
| 31-03 (2) 13 die Synagro | | | | | | | | |
| 31-04 drawing mchs. | X | | | | X | | | |
| 31-06 7 die Vaughn drawing | | | | | | | | |
| mch. | X | | | | X | | | |
| 31-10 (4) Vaughn 16 die | | Alum. | | | | Alum. | | |
| thru light intermediate | | (6) Other | .4% | | | (6) Other | 2.5% | |
| 31-13 drawing machines | | Copper | | | | Copper | | |
| | | (6) Other | 99.6% | | | (6) Other | 97.5% | |
| 31-14 (2) Vaughn 13 die intern. | | | | | | | | |
| 31-16 drawing mchs. | X | | | | X | | | |
| 31-21 10 die Vaughn rod | | | | | | | | |
| drawing machine | X | | | | X | | | |
| 31-40 Vaughn 3 block rod | | | | | | | | |
| drawing and shaving mch. | X | | | | X | | | |
| 31-62 10 die Waterbury-Farrell | | | | | | | | |
| intern.wire drawing mch. | X | | | | X | | | |
| 33-01 (9) 16 die Rome | | | | | | | | |
| thru fine wire drawing | | | | | | | | |
| 33-09 machines | X | | | | X | | | |

QUESTION #16

| MACHINERY OR EQUIPMENT | Prior to Acquisition | | | | Now | | | |
|----------------------------------------------------------------------|-------------------------|------------------------|-----------------------------------------------|-------|-------------------------|------------------------|-----------------------------------------------|-------|
| | (a) Solely Copper | (b) Solely Alum. | (c) No allo- cation. Can run both | Util. | (a) Solely Copper | (b) Solely Alum. | (c) No allo- cation. Can run both | Util. |
| 33-10 (6) 16 die Vaughn thru fine wire drawing 33-15 machines | X | | | | X | | | |
| 33-16 (14) 16 die Vaughn thru fine wire drawing 33-29 machines | X | | | | X | | | |
| 34-04 Water-sealed annealer | X | | | | X | | | |
| 34-05 Water-sealed annealer | X | | | | X | | | |
| 34-06 Water-sealed annealer | X | | | | X | | | |
| 34-07 Water-sealed annealer | X | | | | X | | | |
| 34-08 Electric Bell type annealer | X | | | | X | | | |
| 34-09 Electric Bell type annealer | X | | | | X | | | |
| 34-10 Electric Bell type annealer | X | | | | X | | | |
| 35-01 Fine wire tinning mch. | X | | | | X | | | |
| 35-02 Fine wire tinning mch. | X | | | | X | | | |
| 35-03 Fine wire tinning mch. | X | | | | X | | | |
| 35-04 Fine wire tinning mch. | X | | | | X | | | |
| 35-12 Heavy wire tinning mch. | X | | | | X | | | |
| 36-01 2 stand Torrington flat rolling mch. | X | | | | X | | | |
| 36-02 2 stand Torrington flat rolling mch. | X | | | | X | | | |
| 36-03 2 stand Torrington flat rolling mch. | X | | | | X | | | |
| 36-04 3 stand Rome flat rolling machine | X | | | | X | | | |

QUESTION #16

| MACHINERY OR EQUIPMENT | Prior to Acquisition | | | | Now | | | |
|----------------------------------------------------------------|-------------------------|------------------------|-----------------------------------------------|------------|-------------------------|------------------------|-----------------------------------------------|------------|
| | (a) Solely Copper | (b) Solely Alum. | (c) No allo- cation. Can run both | % Util. | (a) Solely Copper | (b) Solely Alum. | (c) No allo- cation. Can run both | % Util. |
| 38-07 12 wire Larmuth type strander 6" spools | | | | | | | | |
| 38-08 12 wire Larmuth type strander 8" spools | | | | | | | | |
| 38-12 12 wire Larmuth type strander 12" spools | | | | | | | | |
| 38-16 12 wire Larmuth type strander 12" spools | | | ALUM. (6) Others COPPER | .6% | | | ALUM. (6) Others COPPER | 2% |
| 38-17 12 wire Larmuth type strander 8" spools | | | (6) Others | 99.4% | | | (6) Others | 98% |
| 38-18 12 wire Larmuth type strander 8" spools | | | | | | | | |
| 38-19 12 wire Larmuth type strander 8" spools | | | | | | | | |
| 38-20 7 wire Larmuth type strander 12" spools | | | | | | | | |
| 38-62 7 wire Larmuth type strander 8" spools | | | | | | | | |
| 38-63 12 wire Larmuth type strander | | | | | | | | |
| 38-30 61 wire Watson rigid frame strander 6" spools | X | | | | X | | | |
| 38-31 N. E. Butt bunch strander | X | | | | X | | | |
| 38-32 N.E. Butt bunch strander | X | | | | X | | | |
| 38-33 N.E. Butt bunch strander | X | | | | X | | | |
| 38-34 N.E. Butt bunch strander | X | | | | X | | | |
| 38-35 N.E. Butt bunch strander | X | | | | X | | | |
| 38-36 N.E. Butt bunch strander | X | | | | X | | | |
| 38-37 N.E. Butt bunch strander | X | | | | X | | | |
| 38-38 (2) Double spindle | | | | | | | | |
| 38-39 Haskell-Daves bunch stranders 8"x10" traverse reel | X | | | | X | | | |

QUESTION #16

| MACHINERY OR EQUIPMENT | Prior to Acquisition | | | | Now | | | |
|--------------------------------------------------------------------------------------|-------------------------|------------------------|-----------------------------------------------|------------|-------------------------|------------------------|-----------------------------------------------|------------|
| | (a) Solely Copper | (b) Solely Alum. | (c) No allo- cation. Can run both | Z Util. | (a) Solely Copper | (b) Solely Alum. | (c) No allo- cation. Can run both | Z Util. |
| 38-40 (2) Double spindle | | | | | | | | |
| 38-41 Haskell-Daves bunch stranders 8"x10" traverse reel | X | | | | X | | | |
| 38-42 (2) double spindle | | | | | | | | |
| 38-43 Haskell-Daves bunch stranders 12"x22" traverse reel | X | | | | X | | | |
| 38-56 (2) double spindle Haskell-Daves bunch stranders 12" x22" traverse reels | X | | | | X | | | |
| 38-57 N.E. Butt bunch strander | X | | | | X | | | |
| 38-59 (3) N.E. Butt bunch | | | | | | | | |
| 38-60 stranders | | | | | | | | |
| 38-61 | X | | | | X | | | |
| 40-04 4 triple deck N.E. Butt braiders | X | | | | X | | | |
| 40-05 Drum type saturator | X | | | | X | | | |
| 40-06 Drum type saturator | X | | | | X | | | |
| 40-07 Drum type saturator | X | | | | X | | | |
| 40-08 Drum type finisher | X | | | | X | | | |
| 40-09 Drum type finisher | X | | | | X | | | |
| 40-20 Triple head Sinfra knitter | X | | | | X | | | |
| 40-21 2 Triple head Sinfra | X | | | | X | | | |
| 40-22 knitters | | | | | | | | |
| 40-23 2 Triple head Sinfra | | | | | | | | |
| 40-24 knitters | X | | | | X | | | |
| 40-25 Triple head Sinfra knitter | X | | | | X | | | |
| 40-26 Triple head Sinfra knitter | X | | | | X | | | |

[fol. 3461]

QUESTION #16

| MACHINERY OR EQUIPMENT | Prior to Acquisition | | | | Now | | | |
|--------------------------------------------------------------------------|-------------------------|------------------------|-----------------------------------------------|------------|-------------------------|------------------------|-----------------------------------------------|------------|
| | (a) Solely Copper | (b) Solely Alum. | (c) No allo- cation. Can run both | % Util. | (a) Solely Copper | (b) Solely Alum. | (c) No allo- cation. Can run both | % Util. |
| 40-27 3 Triple head Sinfra 40-28 knitters 40-29 | X | | | | X | | | |
| 40-30 2 Triple head Sinfra 40-31 knitters | X | | | | X | | | |
| 52-01 Horizontal cotton covering mch. | X | | | | | | | |
| 52-02 5 Horizontal cotton thru covering machines 52-06 | X | | | | | | | |
| 52-08 1 Horizontal cotton covering mch. | X | | | | | | | |
| 52-11 3 Horizontal double 52-12 paper single cotton 52-14 machines | X | | | | | Alum. (6) Other | | .6% |
| 52-13 1 Horizontal double paper single cotton mch. | X | | | | | Copper (6) Other | | 99.4% |
| 52-15 1 Horizontal double paper single cotton mch. | X | | | | | | | |
| 52-20 Vertical 10 spindle cotton covering mch. | X | | | | | | | |
| 52-21 Vertical 10 spindle double cotton covering mch. | X | | | | | | | |
| 55-01 Horizontal asbestos machine | X | | | | X | | | |
| 55-02 3 Horizontal glass 55-03 covering machines 55-04 | X | | | | X | | | |
| 55-05 Horizontal glass covering machine | X | | | | X | | | |
| 55-06 Horizontal glass covering mch. | X | | | | X | | | |
| 55-07 Horizontal glass covering mch. | X | | | | X | | | |

QUESTION #16

| MACHINERY OR EQUIPMENT | Prior to Acquisition | | | | Now | | | |
|---------------------------------------------------|-------------------------|------------------------------------|-----------------------------------------------|-------|-------------------------|------------------------|-----------------------------------------------|-------|
| | (a) Solely Copper | (b) Solely Alum. | (c) No allo- cation. Can run both | Util. | (a) Solely Copper | (b) Solely Alum. | (c) No allo- cation. Can run both | Util. |
| 55-08 8 spindle vertical glass machine | X | | | | X | | | |
| 55-23 Horizontal glass covering machine | X | | | | X | | | |
| 57-01 4 wire Michigan Oven Co. enamelling unit | X | | | | X | | | |
| 56-01 8 spindle Industrial Oven Co. lacquer tower | X | | | | X | | | |
| 56-05 10 wire vertical glass oven | X | | | | X | | | |
| 61-18 7 wire cabler 12" dia. spools | | | | | | | | |
| 69-20 Service Entrance mch. | | | | | | | | |
| 61-20, 7 wire cabler maximum 48" dia. reels | | | | | | | | |
| 61-22 multiple head taping machine | | Unable to isolate production types | | | | | Unable to isolate production types | |
| 61-23 multiple head taping machine | | | | | | | | |
| 61-37 37 wire cabler 24" dia. reels | | | | | | | | |
| 61-05 reverse lay cabler | X | | | | X | | | |
| 61-09 Edmunds tripler 24" reels | X | | | | X | | | |
| 61-19 48 cradle cabler 12" dia. spools | X | | | | X | | | |
| 61-38 (2) 30" cord twisters | X | | | | X | | | |
| 61-39 | X | | | | X | | | |
| 61-40 10 spindle vertical cotton covering machine | X | | | | X | | | |
| 61-42 44" cable twister | X | | | | X | | | |
| 61-43 Edmunds tripler 24" reels | X | | | | X | | | |

QUESTION #16

| MACHINERY OR EQUIPMENT | Prior to Acquisition | | | | Now | | | |
|----------------------------------------------------|-------------------------|---------------------------------------|-----------------------------------------------|------------|-------------------------|---------------------------------------|-----------------------------------------------|------------|
| | (a) Solely Copper | (b) Solely Alum. | (c) No allo- cation. Can run both | % Util. | (a) Solely Copper | (b) Solely Alum. | (c) No allo- cation. Can run both | % Util. |
| 61-50 Horizontal cotton serving mch. | X | | | | X | | | |
| 63-01 4½" Tuber) | | Alum. | | | | Alum. | | |
| 63-03 6" Tuber) | | (5) Other | 2.6% | | | (6) Other | 11.4% | |
| 63-02 3½" Tuber) | | Copper | 97.4% | | | Copper | 88.6% | |
| | | (5) Other | | | | (6) Other | | |
| | | Not operating | | | | Not operating | | |
| 64-01 4½" Continuous vulcanizing mch.) | | | | | | | | |
| 64-02 3½" Continuous vulcanizing mch.) | | Alum. | | | | Alum. | | |
| 64-03 3½" Continuous vulcanizing mch.) | | (4) Line W. | 19% | | | (4) Line W. | 10% | |
| | | (5) Drop W. | 24% | | | (5) Drop W. | 22% | |
| | | (5) Other | 3% | | | (6) Other | 5% | |
| | | TOTAL | 46% | | | TOTAL | 37% | |
| 64-04 3½" Continuous vulcanizing mch.) | | Copper | | | | Copper | | |
| 64-05 3½" Continuous vulcanizing mch.) | | (4) Line W. | 5% | | | (4) Line W. | 4.3% | |
| 64-06 4½" Continuous vulcanizing mch.) | | (5) Drop W. | .6% | | | (5) Drop W. | .9% | |
| 64-07 4½" Continuous vulcanizing mch.) | | (5) Other | 48.4% | | | (6) Other | 57.8% | |
| 64-19 6" Continuous vulcanizing mch.) | | TOTAL | 54% | | | TOTAL | 63.0% | |
| 67-01 (140) 16 carrier thru Wardwell braidors) | | | | | | | | |
| 67-05) | | | | | | | | |
| 67-08 (16) 24 carrier Wardwell braidors) | | Unable to isolate production types | | | | Unable to isolate production types | | |
| 67-09 (13) Cable braidors) | | | | | | | | |
| 67-40 Yarn serving mch.) | | | | | | | | |
| 69-10 Large finisher) | | | | | | | | |
| 69-13 Small finisher) | | | | | | | | |

QUESTION #16

| MACHINERY OR EQUIPMENT | Prior to Acquisition | | | | Now | | | |
|-------------------------------------------------------------------|-------------------------|------------------------------|-----------------------------------------------|------------|-------------------------|------------------------------|-----------------------------------------------|------------|
| | (a) Solely Copper | (b) Solely Alum. | (c) No allo- cation. Can run both | % Util. | (a) Solely Copper | (b) Solely Alum. | (c) No allo- cation. Can run both | % Util. |
| 75-08 Robertson continuous lead extruder w/9" die block | X | | | | X | | | |
| 75-09 Robertson continuous lead extruder with 11" die block | X | | | | X | | | |
| 85-20 48" Edmunds twister | | Alum. (5) Drop W. Cpr. | | 91% | | Alum. (5) Drop W. Cpr. | | 88% |
| 87-01 36" Edmunds twister | X | | (5) Drop W. | 9% | X | | (5) Drop W. | 12% |
| 87-03 (2) Reflex saturating 87-04 and finishing mchs. | X | | | | X | | | |
| 87-10 (21) 16 carrier Wardwell braiders | X | | | | X | | | |
| 87-11 (6) 24 carrier Wardwell braiders | X | | | | X | | | |
| 87-12 (16) Paper wrap mchs. | X | | | | X | | | |
| 88-01 2½" Plastic extruder)) | | Alum. | | | | Alum. | | |
| 88-02 3½" Plastic extruder)) | | (4) Line W. | | 11% | | (4) Line W. | | 7% |
| 88-03 3½" Plastic Extruder)) | | (5) Drop W. | | 15% | | (5) Drop W. | | 15% |
| 88-04 4½" Plastic Extruder)) | | (6) Other | | 3% | | (6) Other | | 3% |
| | | TOTAL | | 29% | | TOTAL | | 25% |
| 88-05 4½" Plastic extruder)) | | Copper | | | | Copper | | |
| 88-06 4½" Plastic extruder)) | | (4) Line W. | | 4.0% | | (4) Line W. | | 5.0% |
| 88-07 6" Plastic extruder)) | | (5) Drop W. | | 2.3% | | (5) Drop W. | | .8% |
| 88-08 (4) 1-1/2" Plastic extruders)) | | (6) Other | | 64.7% | | (6) Other | | 69.2% |
| | | TOTAL | | 71.0% | | TOTAL | | 75.0% |
| 88-41 (8) Vertical striping machines | X | | | | X | | | |

[fol. 3467]

Interrogatory 18

18. For each of the years 1956 through 1958 and for the first quarterly period in 1959, separately state for (a) Alcoa and (b) Rome the sales of ACSR, in pounds, linear feet and dollars, broken down into sales of each type of ACSR, designated by its code word and by its cir mils or AWG.

Answer to Interrogatory 18

The attached tabulation separately states for each of the years 1956 through 1958 and for the first quarterly period in 1959 (a) Alcoa's shipments and (b) Rome's sales of ACSR in pounds, linear feet, and dollars with a breakdown according to type of ACSR. The manner in which Alcoa's records are maintained makes it impracticable to report sales by size of ACSR. Shipment data closely approximate sales data and any discrepancy would be insignificant. Because shipment rather than sales records were used, the dollar values shown for individual sizes of ACSR are based on calculation rather than actual sales revenue records.

[fol. 3468]

ANSWER 18 (a)

| Code Word | Circular Mile or AUG | 1956 | | | 1957 | | | 1958 | | | 1st Quarter 1959 | | |
|-----------|----------------------------|-----------|------------|-----------|-----------|------------|-----------|-----------|------------|-----------|------------------|------------|---------|
| | | Pounds | Feet | Amount | Pounds | Feet | Amount | Pounds | Feet | Amount | Pounds | Feet | Amount |
| Turkey | 5 | 16,176 | 660,245 | 8,926 | 7,676 | 313,306 | 4,293 | 42,930 | 1,752,245 | 21,444 | 381 | 15,551 | 191 |
| Thrush | 5 | | | | 512 | 16,570 | 270 | | | | | | |
| Swan | 5 | 1,060,052 | 27,180,815 | 527,658 | 437,106 | 11,207,844 | 222,706 | 419,927 | 10,767,357 | 190,395 | 61,462 | 1,575,948 | 27,726 |
| Sparrow | 2 | 2,450,257 | 59,520,269 | 1,174,896 | 2,079,926 | 33,547,189 | 998,780 | 1,943,940 | 31,354,867 | 829,090 | 404,541 | 6,524,854 | 170,828 |
| Shrike | 33,185 | | | | 4,788 | 152,484 | 6,062 | | | | 996 | 51,720 | 1,074 |
| Robin | 1 | 8,548 | 110,588 | 4,057 | 677 | 8,657 | 317 | 112,580 | 1,439,642 | 46,743 | | | |
| Raven | 1/0 | 4,195,819 | 42,553,912 | 1,963,741 | 3,288,638 | 33,353,808 | 1,506,219 | 3,450,847 | 34,998,421 | 1,412,122 | 805,729 | 8,171,789 | 328,901 |
| Quail | 2/0 | 952,973 | 7,666,732 | 442,657 | 1,029,588 | 8,263,537 | 72,597 | 1,054,435 | 8,482,982 | 28,417 | 259,027 | 2,083,931 | 10,811 |
| Pigeon | 2/0 | | | | | | | | | | 1,194 | 14,401 | 84 |
| Penguin | 3/0 | 1,950,208 | 12,437,549 | 900,606 | 1,356,047 | 8,648,258 | 611,306 | 1,531,470 | 9,767,026 | 516,876 | 148,658 | 948,074 | 89,597 |
| 5/1 | 4/0 | 2,944,721 | 14,894,880 | 1,359,871 | 3,895,463 | 19,708,923 | 1,756,526 | 3,024,848 | 15,300,165 | 1,218,409 | 596,564 | 3,441,005 | 261,215 |
| Quante | 4 | | | | 1,076 | 5,443 | 307 | | | | | | |
| Sparate | 2 | 2,722,105 | 69,797,549 | 1,302,602 | 1,715,146 | 43,978,093 | 950,019 | 1,885,125 | 48,336,528 | 927,293 | 488,497 | 12,523,561 | 234,479 |
| Grouse | 30,000 | 1,180,123 | 19,034,239 | 520,509 | 77,728 | 12,493,611 | 404,732 | 768,562 | 12,395,160 | 357,525 | 185,233 | 2,987,629 | 81,870 |
| Patrol | 101,800 | 162,467 | 2,153,341 | 106,140 | 50,678 | 807,962 | 39,847 | 77,379 | 1,030,345 | 46,010 | 30,145 | 401,398 | 17,090 |
| Minorea | 110,800 | 46,869 | 488,218 | 42,154 | 19,407 | 202,156 | 17,600 | 17,391 | 121,156 | 14,302 | 23,318 | 244,979 | 13,722 |
| Leghorn | 134,600 | 1,487 | 14,230 | 1,313 | 4,035 | 38,612 | 3,591 | 17,122 | 163,847 | 13,807 | 2,410 | 23,062 | 1,879 |
| Guinea | 139,000 | 17,681 | 139,220 | 14,944 | 54,064 | 268,220 | 28,924 | 73,151 | 575,992 | 56,180 | 11,215 | 88,291 | 8,492 |
| Dotterey | 176,900 | 130,601 | 870,672 | 106,388 | 151,308 | 1,022,052 | 125,053 | 8,609 | 57,393 | 6,341 | 77,210 | 514,753 | 34,529 |
| 18/12 | 183,600 | 835 | 5,003 | 566 | 835 | 5,003 | 565 | 6,322 | 37,879 | 4,550 | 362 | 2,175 | 250 |
| Dorking | 190,800 | 542 | 3,129 | 591 | | | | | | | 18,223 | 105,214 | 16,051 |
| Brahm | 203,200 | 9,402 | 52,233 | 7,438 | | | | 26,776 | 148,753 | 19,065 | 135 | 750 | 92 |
| Cochin | 211,300 | | | | 5,296 | 27,626 | 5,156 | 1,964 | 10,245 | 1,719 | | | |
| 8/7 | 219,900 | 24,159 | 121,219 | 18,827 | 39,719 | 199,393 | 30,826 | 3,251 | 16,312 | 2,272 | 2,529 | 12,689 | 1,687 |
| Owl | 266,800 | 45,016 | 217,049 | 27,568 | 27,437 | 132,290 | 16,168 | 25,116 | 121,094 | 13,424 | 14,193 | 66,431 | 7,322 |
| Waxwing | 266,800 | 142,557 | 559,317 | 72,619 | 88,149 | 352,032 | 45,519 | 11,286 | 45,072 | 5,062 | | | |
| Partridge | 266,800 | 13,438 | 53,566 | 5,754 | 28,033 | 111,953 | 12,118 | 135,016 | 539,201 | 52,169 | | | |
| Ostrich | 300,000 | 772,404 | 3,072,719 | 401,319 | 759,957 | 3,019,294 | 398,445 | 418,597 | 1,662,078 | 199,336 | 527,486 | 2,095,691 | 244,279 |
| Marlin | 335,400 | 983 | 3,491 | 504 | 5 | 18 | 3 | | | | | | |
| Linnet | 335,400 | 1,811,848 | 5,737,325 | 760,976 | 2,197,566 | 6,958,091 | 933,881 | 1,803,507 | 5,710,913 | 696,695 | 484,642 | 1,534,648 | 182,322 |
| Orion | 335,400 | 3,718,476 | 11,719,112 | 1,862,213 | 3,548,748 | 11,181,199 | 1,751,053 | 2,060,447 | 6,492,684 | 93,067 | 706,100 | 2,225,338 | 141,587 |
| Chionadee | 397,500 | 573,099 | 1,801,628 | 309,308 | 158,082 | 496,956 | 85,902 | 150,647 | 599,329 | 93,798 | 8,441 | 26,536 | 4,006 |
| Tois | 397,500 | 29,221 | 78,446 | 12,033 | 132,747 | 356,367 | 35,170 | 85,076 | 228,392 | 32,116 | | | |
| Lark | 397,500 | 1,354,050 | 3,557,458 | 552,484 | 1,082,458 | 2,886,547 | 531,812 | 1,052,448 | 2,806,521 | 428,550 | 234,764 | 526,036 | 101,089 |
| Pelican | 477,000 | 120,148 | 319,627 | 63,775 | 38,355 | 102,035 | 20,447 | 359,727 | 956,975 | 173,400 | 78,092 | 297,747 | 36,366 |
| Flicker | 477,000 | 497,580 | 1,102,228 | 132,172 | 759,974 | 1,697,121 | 306,802 | 738,695 | 1,349,602 | 270,658 | 231,224 | 516,253 | 82,177 |
| Hawk | 477,000 | 438,166 | 973,701 | 201,206 | 286,166 | 622,586 | 123,576 | 45,276 | 100,613 | 18,980 | 160,663 | 401,473 | 73,477 |
| | | 1,956,392 | 4,347,533 | 941,611 | 3,585,128 | 7,969,165 | 1,734,252 | 2,270,908 | 5,046,537 | 994,885 | 47,788 | 106,195 | 20,214 |

[fol. 3469]

-2-

| Code Word | Circular Mills or AUG | 1955 | | | 1957 | | | 1958 | | | 1st Quarter 1959 | | |
|--------------|-----------------------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|------------------|-----------|---------|
| | | Pounds | Feet | Amount | Pounds | Feet | Amount | Pounds | Feet | Amount | Pounds | Feet | Amount |
| Hen | 477,000 | 11,058 | 24,519 | 5,756 | 144,383 | 320,139 | 75,238 | 14,816 | 32,851 | 6,978 | 4,785 | 10,610 | 2,166 |
| Heron | 500,000 | 186,718 | 394,752 | 96,981 | | | | 90,352 | 191,019 | 42,393 | 289,150 | 611,309 | 130,378 |
| Osprey | 556,500 | 46,191 | 88,488 | 18,167 | 46,191 | 88,488 | 18,378 | | | | | | |
| Parakeet | 556,500 | 243,472 | 463,756 | 110,609 | 507,628 | 966,910 | 231,935 | 446,287 | 850,070 | 184,718 | 140,381 | 267,392 | 56,166 |
| Dove | 556,500 | 3,142,222 | 5,985,179 | 1,491,927 | 1,959,047 | 3,731,514 | 933,290 | 1,452,674 | 2,766,995 | 626,248 | 39,612 | 75,451 | 16,471 |
| Eagle | 556,500 | 2,067 | 3,930 | 1,064 | 12,996 | 24,707 | 6,685 | | | | | | |
| Peacock | 605,000 | | | | 87 | 152 | 39 | | | | | | |
| Groosbeak | 636,000 | 2,218,839 | 3,698,050 | 1,041,967 | 2,167,823 | 3,613,024 | 1,019,527 | 543,971 | 906,615 | 231,460 | 72,817 | 121,361 | 29,848 |
| Hook | 636,000 | 331,531 | 552,549 | 148,625 | 300,018 | 500,028 | 134,978 | 1,106,031 | 1,843,378 | 450,486 | 371,350 | 618,914 | 146,015 |
| Kingbird | 636,000 | 110,114 | 184,445 | 42,636 | 189,502 | 317,423 | 73,792 | 20,864 | 34,948 | 7,361 | | | |
| 18/3 | 653,000 | 175,294 | 285,494 | 66,156 | 262,740 | 427,914 | 99,605 | | | | 115,322 | 187,820 | 38,172 |
| Flamingo | 666,600 | 287,291 | 456,741 | 128,103 | 749,043 | 1,190,844 | 334,972 | 553,909 | 880,616 | 224,278 | 340,745 | 541,723 | 133,061 |
| Starling | 715,500 | 120,630 | 178,711 | 56,045 | 486,429 | 720,635 | 226,676 | | | | 933,669 | 1,244,889 | 373,374 |
| Drake | 795,000 | 3,003,059 | 4,004,069 | 1,379,005 | 3,511,804 | 4,682,394 | 1,616,483 | 3,341,723 | 4,455,620 | 1,390,157 | 119,588 | 159,450 | 45,826 |
| 24/7 | 795,000 | | | | | | | | | | | | |
| Coot | 795,000 | 23,177 | 30,903 | 8,854 | 1,360,842 | 1,814,451 | 525,013 | 1,855,082 | 2,473,436 | 650,021 | | | |
| 26/7 | 850,500 | 5,146 | 6,416 | 2,343 | | | | | | | | | |
| 36/1 | 954,000 | 265,452 | 294,946 | 103,234 | | | | | | | | | |
| 36/1 | 1,033,500 | | | | | | | 35,644 | 39,604 | 12,436 | | | |
| 22/37 | 236,850 | | | | | | | 388,379 | 398,337 | 121,912 | | | |
| 50/7 | 468,200 | 7,873 | 14,634 | 3,644 | | | | 1,205 | 5,379 | 1,420 | | | |
| 42/19 | 556,500 | | | | | | | | | | | | |
| 45/7 | 628,700 | 264,667 | 446,319 | 111,875 | | | | 13,118 | 24,987 | 7,929 | | | |
| 46/19 | 631,000 | 6,624 | 11,095 | 3,950 | | | | | | | | | |
| Egret | 636,000 | 6,844 | 11,388 | 3,584 | | | | | | | | | |
| Crow | 715,500 | 373 | 553 | 170 | | | | 7,722 | 12,849 | 3,627 | | | |
| Tern | 795,000 | 49,371 | 65,828 | 20,366 | 390,389 | 520,517 | 149,441 | 1,687,927 | 2,250,564 | 630,947 | 1,338,470 | 1,784,622 | 497,108 |
| Condor | 795,000 | 103,937 | 138,582 | 46,865 | 30,264 | 40,352 | 12,581 | 632,104 | 842,803 | 256,065 | 8,699 | 11,599 | 3,487 |
| Wallard | 795,000 | 231,898 | 308,370 | 118,082 | 1,924 | 2,558 | 902 | 55,928 | 74,372 | 25,486 | | | |
| 46/61 | 807,000 | | | | | | | 28,573 | 37,379 | 26,330 | | | |
| Canary | 900,000 | 414,538 | 488,264 | 184,428 | 251,762 | 296,538 | 103,399 | 86 | 101 | 34 | | | |
| Rail | 954,000 | 163,599 | 181,776 | 66,470 | 716,653 | 796,280 | 269,247 | 994,884 | 1,105,426 | 364,625 | 673,476 | 748,306 | 244,943 |
| 8/7 | 954,000 | | | | 39,020 | 43,356 | 15,807 | | | | | | |
| Cardinal | 954,000 | 780,154 | 866,837 | 345,296 | 703,981 | 782,200 | 287,435 | 1,082,169 | 1,202,409 | 430,270 | | | |
| 48/7 | 1,027,400 | 370,384 | 382,233 | 161,080 | 149,752 | 154,543 | 60,305 | | | | | | |
| Ordn | 1,033,500 | 82,575 | 84,692 | 33,286 | 372,168 | 381,710 | 139,042 | 470,445 | 482,507 | 171,430 | 5,284 | 5,453 | 2,066 |
| Curlew | 1,033,500 | 854,073 | 875,971 | 375,792 | 1,925,991 | 1,975,373 | 781,567 | 1,292,520 | 1,325,660 | 510,545 | 51,274 | 52,589 | 18,525 |
| Bluejay | 1,113,000 | | | | 695,232 | 658,983 | 259,210 | 471,117 | 446,553 | 170,639 | 480,342 | 492,658 | 187,333 |
| Finch | 1,113,000 | | | | 23,856 | 22,612 | 8,941 | | | | | | |
| 36/84 X 3/19 | 2,753,300 | | | | | | | 706 | 669 | 287 | | | |
| 63/19 | 1,158,400 | | | | | | | 293 | 106 | 134 | 5 | 2 | 2 |
| Bunting | 1,192,500 | 142,979 | 126,529 | 57,034 | 859,107 | 760,267 | 217,182 | 62,598 | 57,167 | 27,193 | | | |
| Grackle | 1,192,500 | | | | 888,415 | 786,203 | 368,070 | | | | 586,611 | 519,121 | 209,127 |
| Bittern | 1,272,000 | 776,440 | 643,809 | 308,091 | 609,215 | 505,149 | 223,521 | 315,965 | 279,613 | 127,555 | 374,849 | 331,723 | 149,752 |
| Pheasant | 1,272,000 | 37,776 | 32,322 | 16,886 | 12,637 | 10,478 | 5,203 | 871,913 | 722,973 | 311,796 | 18,931 | 15,697 | 6,703 |
| Dipper | 1,351,500 | 102,607 | 80,123 | 40,501 | 65 | 51 | 24 | 832 | 690 | 334 | | | |
| Sobolink | 1,431,000 | | | | | | | | | | | | |
| Plover | 1,431,000 | | | | | | | 253,283 | 186,647 | 89,713 | 737,410 | 543,405 | 258,388 |
| 48/7 | 1,458,000 | 235,682 | 170,157 | 99,788 | 14,053 | 10,356 | 5,734 | 678 | 500 | 269 | | | |
| Lapwing | 1,590,000 | | | | | | | | | | | | |
| Salmon | 1,590,000 | | | | | | | 905,768 | 601,040 | 318,649 | | | |
| Chukar | 1,780,000 | 252,981 | 167,871 | 110,957 | 25,473 | 16,903 | 10,299 | 517,003 | 343,068 | 203,441 | 79,880 | 53,006 | 31,041 |
| 8-19 | 2,156,000 | 549,182 | 325,533 | 225,549 | 4,231 | 2,508 | 1,609 | | | | | | |
| Kiwi 72/7 | 2,167,000 | | | | 38,774 | 18,969 | 14,501 | 50,267 | 24,592 | 18,317 | | | |
| | | | | | | | | | | | 2,075 | 1,010 | 841 |

| Code Word | Circular Mils or AWG | 1956 | | | 1957 | | | 1958 | | | 1st Quarter 1959 | | |
|-----------|----------------------------|---------|---------|---------|-----------|-----------|-----------|-----------|-----------|-----------|------------------|--------|--------|
| | | Pounds | Feet | Amount | Pounds | Feet | Amount | Pounds | Feet | Amount | Pounds | Feet | Amount |
| 72/7 | 2,874,000 | - | - | - | 9,814 | 3,511 | 3,978 | 930 | 342 | 367 | - | - | - |
| Expanded | 922,000 | 25,979 | 29,488 | 14,561 | - | - | - | - | - | - | - | - | - |
| Expanded | 1,275,000 | - | - | - | 27,047 | 22,298 | 15,257 | - | - | - | - | - | - |
| Expanded | 1,414,000 | 395,327 | 294,799 | 207,151 | 2,984,605 | 2,225,650 | 1,684,213 | 4,356,895 | 3,248,980 | 2,697,789 | 60,561 | 45,161 | 38,050 |

Note: All weights are aluminum only.

ANSWER 18 (b)

| Code Word | Circular Mile or AWG | 1956 | | | 1957 | | | 1958 | | | 1st Quarter 1959 | | |
|-----------|----------------------------|---------|-----------|--------|--------|-----------|--------|---------|-----------|---------|------------------|---------|--------|
| | | Pounds | Feet | Amount | Pounds | Feet | Amount | Pounds | Feet | Amount | Pounds | Feet | Amount |
| Turkey | 6 | 2,192 | 89,443 | 1,315 | 728 | 29,694 | 425 | 582 | 23,739 | 313 | - | - | - |
| Sparrow | 4 | 25,232 | 646,584 | 13,329 | 24,010 | 615,281 | 12,518 | 34,975 | 896,274 | 17,868 | 8,827 | 226,200 | 4,002 |
| | 2 | 120,975 | 1,959,837 | 57,464 | 76,101 | 1,232,858 | 36,865 | 55,486 | 898,898 | 25,190 | 4,932 | 79,893 | 2,121 |
| Robin | 1 | - | - | - | - | - | - | - | - | - | - | - | - |
| Raven | 1/0 | 39,090 | 397,240 | 18,797 | 99,041 | 1,006,455 | 45,930 | 71 | 905 | 33 | 348 | 4,454 | 179 |
| Quail | 2/0 | 23,496 | 190,322 | 11,624 | 12,484 | 101,123 | 5,856 | 71,991 | 731,573 | 33,579 | 42,861 | 435,549 | 17,446 |
| | | | | | | | | 19,413 | 157,245 | 8,854 | 5,650 | 45,766 | 2,276 |
| Pigeon | 3/0 | 8,535 | 54,051 | 3,944 | 23,534 | 149,038 | 11,068 | 1,814 | 11,485 | 930 | - | - | - |
| Penguin | 4/0 | 15,151 | 75,864 | 6,924 | 23,409 | 117,218 | 10,921 | 10,626 | 53,207 | 4,787 | 5,069 | 25,384 | 2,010 |
| Swanate | 4 | 34,985 | 897,204 | 19,335 | 55,933 | 1,434,423 | 31,953 | 204,582 | 5,246,588 | 109,992 | 22,187 | 568,987 | 10,656 |
| Sparate | 2 | - | - | - | - | - | - | - | - | - | - | - | - |
| Merlin | 336,400 | 129,221 | 403,583 | 53,686 | 18,009 | 291,362 | 9,428 | 9,935 | 160,740 | 4,853 | 1,808 | 29,253 | 880 |
| Chickadee | 397,500 | - | - | - | 36,540 | 114,121 | 16,570 | 7,815 | 24,408 | 318 | 8,894 | 27,778 | 6,217 |
| | | | | | 397 | 1,056 | 189 | - | - | - | - | - | - |

Note: All weights are aluminum only.

[fol. 3562]

INTERROGATORY 47

Identify each acquisition or merger, since January 1, 1951, of any company then or now manufacturing:

(A) any copper wire and cable product

(B) any steel conduit product

(C) any aluminum wire and cable product

(D) any aluminum conduit product

(E) any accessory product related to any product included in any of the categories (A) through (D) above by or with any company producing any such product or any material utilized in the production of any such product.

INTERROGATORY 48

With respect to each acquisition or merger identified in answer to 47, identify:

(A) the date of acquisition and the companies involved; and

(B) the products manufactured, distributed or sold by each company involved.

ANSWERS TO INTERROGATORIES 47 and 48

| <u>Acquiring Company</u> | <u>Products of Acquiring Company</u> | <u>Acquired Company</u> | <u>Products of Acquired Company</u> | <u>Date</u> |
|----------------------------------------------------|------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------|--------------------------------|
| American Enka Corp. Enka, N.C. | Rayon and nylon yarns and fibers used in covering wire and cable products | Rex Corporation West Acton, Mass. Wm. Brand & Co. Willemantic, Conn. | Plastic communication and control cable Plastic insulated con- trol cable; fixture and appliance wire | March 1958 January 1959 |
| Anaconda Wire & Cable Co. New York, New York | Copper rod; bare and insulated or covered wire and cable | Sequoia Wire & Cable Co. Redwood City, Calif. | Special plastic wires for aircraft, missile, and electronic controls | April 1959 |

[fol. 3563]

| <u>Acquiring Company</u> | <u>Products of Acquiring Company</u> | <u>Acquired Company</u> | <u>Products of Acquired Company</u> | <u>Date</u> |
|--------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------|---------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------|---------------|
| Beryllium Corp. Reading, Pa. | Beryllium alloys; copper rod and wire | Nonotuck Manufactur- ing Co. Holyoke, Mass. | Bare and stranded wire | December 1955 |
| Cerro Corporation (Formerly Cerro de Pasco Corp.) New York, N.Y. | Copper | Circle Wire & Cable Corp. Maspeth, N.Y. | Copper rod, bare wire, building wire, cord, rubber and plastic power cable, varnished cambric, armored cable, thin wall conduit. | December 1955 |
| | | Rockbestos Products Corp. | Special purpose plastic, asbestos and varnished cambric wire and cable | June 1955 |
| Continental Copper & Steel Industries, Inc. Perth Amboy, N.J. | Insulated wire and cord sets | Spencer Wire Corp. Union, N.J. | wire and cable | October 1955 |
| Copperweld Steel Co. Pittsburgh, Pa. | Copper covered steel wire and rods; solid and stranded wire | Flexo Wire Co. Oswego, N.Y. | Fine bare and stranded wires | 1951 |
| Crescent Co. Pawtucket, R.I. (a division of Penn- Texas Corp. at the time of acquisitions) | Insulated wire and cable | Lowell Insulated Wire Corp. Lowell, Mass. | Flexible cords, fixture and appli- ance wire | October 1956 |
| | | Carol Cable Co. Pawtucket, R.I. | Flexible cords, fixture and appli- ance wire | October 1956 |

[fol. 3564]

| <u>Acquiring Company</u> | <u>Products of Acquiring Company</u> | <u>Acquired Company</u> | <u>Products of Acquired Company</u> | <u>Date</u> |
|---------------------------------------|--------------------------------------------------|---------------------------------------------------------------|-----------------------------------------|-------------|
| Essex Wire Corp. Fort Wayne, Ind. | Bare, insulated and covered wire and cable | Carolina Industrial Plastics Corp. Mt. Airy, N.C. | Plastic and insulated cord sets | 1952 |
| | | J. M. White Co. Philadelphia, Pa. | Wire and cable assemblies | April 1955 |
| Carlisle Corp. Carlisle, Pa. | Unknown | Tensolite Insulated Wire Co. Tarrytown, N.Y. | Special purpose insu- lated wires | 1959 |
| | | International Wire Products Corp. Midland Park, N.J. | Unknown | 1959 |
| General Cable Corp. New York, N.Y. | Bare, insulated and covered wire and cable | General Insulated Wire Works Providence, R. I. | Cord sets and assemblies | June 1955 |
| | | New England Cable Co. Concord, N.H. | Cords | June 1956 |
| | | Clifton Conduit Co. Baltimore, Md. Memphis, Tenn. | EMT and rigid conduit, building wire | March 1956 |
| | | Alphaduct Wire & Cable New Brunswick, N.J. | Telephone cords | May 1956 |
| | | Cornish Wire Co. North Adams, Mass. Williamstown, Mass. | Cords and assemblies | June 1959 |

[fol. 3565]

| <u>Acquiring Company</u> | <u>Products of Acquiring Company</u> | <u>Acquired Company</u> | <u>Products of Acquired Company</u> | <u>Date</u> |
|--------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------|---------------|
| General Cable (cont'd) | | Indiana Steel & Wire Co. Muncie, Ind. | Steel wire | May 1959 |
| | | Hathaway Patterson Corp. Palatka, Florida | Wood poles and crossarms | 1958 |
| International Tel & Tel New York, N.Y. | Coaxial cable and other communications products | Royale Electrical Co., Inc. Pawtucket, R.I. | Flexible cords and telephone cords | October 1956 |
| Kaiser Aluminum & Chemical Corp. Oakland, Calif. | Aluminum ingot, rod and bar; bare, insu- lated and covered wire and cable; conduit | Wire Mill Division of U.S. Rubber Co. Bristol, R.I. | Weatherproof wire, cords, building wire, service entrance, power cables, signal and control, latex insu- lated wire, service drop | February 1957 |
| Kennecott Copper Corp. New York, N.Y. | Copper wire bar; rod; bare, insulated and covered wire and cable | Okonite Co., Passaic, N.J. | Paper and varnished cambric cables, rubber and plastic power cables, control cable, communication cables, instrumentation cables | December 1958 |
| Leviton Mfg. Co. Brooklyn, N.Y. | Bare wire, building wire, weatherproof, cords, rubber and plastic power cables, control cables, tele- phone communication wire | Rhode Island Insulated Wire Co. Providence, R.I. | Plastic building wire and cords | 1955 |

[fol. 3566]

| <u>Acquiring Company</u> | <u>Products of Acquiring Company</u> | <u>Acquired Company</u> | <u>Products of Acquired Company</u> | <u>Date</u> |
|----------------------------------------------------|----------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------|
| Miami Copper Co. New York, New York | Copper wire bar | Chester Cable Corp. Chester, N.Y. | Plastic building wire, instrument wire, var- nished cambric | September 1956 |
| Narragansett Wire Co., Inc. Pawtucket, R.I. | Insulated or covered wire and cable | Texas Wire & Cables Plano, Texas Jordan Rogers Co. Orange, Calif. Chadmore Manufacturing Co., Taunton, Mass. | Bare wire and insulated building wire Plastic hose, pipe and plastic insulated wires Plastic insulated wires | July 1954 July 1957 Unknown |
| Olin Mathieson Chemical Corp. New York, N.Y. | Chemicals; owns 1/2 interest in Ormet, a primary aluminum producer | Southern Electrical Corp. | Aluminum rod, bare wire, ACSR, weatherproof, service drop, and other insulated or covered wire and cable products | May 1957 |
| Phelps Dodge Corp. New York, N.Y. | Copper and copper products including rod, bare and insu- lated wire and cable | Edlin, Inc. Bethesda, Md. | Connector adapters and accessories for alum- inum sheathed cables | 1960 |
| Simplex Wire & Cable Co. Cambridge, Mass | Insulated wire and cable | Hi Temp Wires, Inc. Westbury, N.Y. Monrovia, Calif. | Special plastic insu- lated wires | Sept. 1960 |

[fols. 3567-3568]

| <u>Acquiring Company</u> | <u>Products of Acquiring Company</u> | <u>Acquired Company</u> | <u>Products of Acquired Company</u> | <u>Date</u> |
|---------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|
| Warren Wire Corp. Pownal, Vermont | Enameled wire, magnet wire, fine wire, and wire making equipment | Wire Company of America Alhambra, Calif. | Missile and instrument assemblies | December 1959 |
| Aluminum Company of America Pittsburgh, Pa. | Aluminum ingot, rod and bar; ACSR, bare wire, weatherproof, service drop cable; conduit; cable acces- sories | Rome Cable Corporation Rome, New York Collegeville, Pa., and Torrance, California | Weatherproof, service drop, ACSR, bare wire, building wire, service entrance, power cables, magnet wire, and other wire and cable; cable installation devices; conduit. | April 1959 |
| | | Rea Magnet Wire Co. Fort Wayne, Ind. | Magnet wire | January 1960 |
| Rome Cable Corporation Rome, New York | As listed | T. J. Cope, Inc. Collegeville, Pa. | Cable installation devices | April 1957 |

[fol. 3569]

Interrogatory 50

50. Identify each type of information relating to any wire, cable, conduit, or accessory product which Alcoa, or any of its subsidiaries, reports to any agency, association, or organization, or has reported at any time since January 1, 1954. For each such type of information identify:

- (A) the reporting forms
- (B) the products and subjects included
- (C) the agency, association or organization to whom the reports are made.

Answer to Interrogatory 50

Following is a tabulation of the types of information relating to any wire, cable, conduit, or accessory product which Alcoa or any of its subsidiaries reports or has reported since January 1, 1954, to any agency, association, or organization.

| (A) Type of Information | (B) Reporting Form | (C) Products and Subjects Included | (D) To Whom Submitted |
|-------------------------------------------|--------------------------|---------------------------------------------------------------------------------------------------------------------------|-----------------------------|
| Quantity of shipments and unfilled orders | BDSAF-84 | Copper wire mill products | U.S. Department of Commerce |
| Quantity of shipments | BDSAF-122 | (1) Wire, bare, conductor and nonconductor ACSR and aluminum cable, bare | U.S. Department of Commerce |
| Production | BDSAF-481 | Wire and cable, insulated or covered | U.S. Department of Commerce |
| Maximum production | | Solid conductor and 7 strand, bare | |
| Production run out | | Service drop | |
| Inventory | | Power cable | |
| [fol. 3570] | | | |
| Stocks on hand | BDSAF-530 | All conductor. Conductor, bare Weatherproof Service drop and entrance Power cable Building wire Non-metallic sheath cable | U.S. Department of Commerce |

(1) During a portion of the period involved bare conductor wire was reported separately from bare nonconductor wire.

| Type of Information | Reporting Form | Products and Subjects Included | To Whom Submitted |
|-------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------|
| Quantity of shipments | 1-Asn. | Aluminum wire other than conductor ACSR and aluminum cable, bare Aluminum wire conductor, bare Aluminum wire and cable conductor, insulated or covered Wrought mill products | The Aluminum Association |
| Quantity of shipments by end use | 2-Asn. | Wire, other than conductor ACSR and aluminum cable, bare Bare wire conductor Conductor wire and cable, insulated or covered | The Aluminum Association The Aluminum Association |
| Quantity of shipments by end use | 3-Asn. & 4-Asn. | Copper, unalloyed—rod Aluminum rod Bare wire, conductor Bare wire, non-conductor Copper wire and cable Aluminum and aluminum base alloy wire Wire rope, cable and strand (except insulated) Cable-steel reinforced (ACSR and other aluminum cable, bare) Thermoplastic, covered Polychloroprene (neoprene), covered Service cable including self-supporting type Building wire and cable Power wire and cable Marine wire and cable (U.S. Navy and Merchant Marine) Appliance wire and cord Weatherproof and slow burning wire Magnet wire Control wire and cable Signal wire and cable Communication wire and cable Extruded and drawn tube (includes conduit) Electrical conduit and conduit fittings (including underground & underfloor) Steel pipe and tube Cable installation equipment Pole line hardware Unclassified | U.S. Department of Commerce |
| Value and, for some items, quantity of shipments | MC 33 F MC 33 H MC 33 M & MC 36 A | | |
| Various data relating to number of employees, payroll, material and fuel or electricity consumed, inventories, capital expenditures, etc. | | | |

[fol. 3571]

| Type of Information | Reporting Form | Products and Subjects Included | To Whom Submitted |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------|
| Value of shipments Various data relating to number of employees, payroll, material and fuel or electricity consumed, inventories, capital expenditures, etc. | MA-100 | Rolled copper rods Aluminum rods Bare wire—conductor Bare and tinned copper wire and cable Aluminum wire and cable (including ACSR) Cable—steel reinforced (ACSR & other aluminum cable, bare) Weatherproof slow burning and building wire Magnet wire Communication wire and cable Appliance wire and flexible cord Power wire and cable Other insulated wire and cable Conduit—EMT and rigid Extruded and drawn tube (includes conduit) Mechanical steel tubing Raceways—electrical Cable installation equipment | U.S. Department of Commerce |
| [fol. 3572] | | | |
| Domestic and export shipments (footage) and total unfilled orders (tonnage) | S-530 | Rigid steel conduit | National Electrical Manufacturers Assoc. |
| Total (domestic and export) unit sales billed | S-534 | Rigid steel conduit, elbows, and couplings | National Electrical Manufacturers Assoc. |
| Total (domestic and export) unit sales billed and unfilled orders (footage) | S-538 | Rigid steel conduit Steel electrical metallic tubing | National Electrical Manufacturers Assoc. |
| Value of net sales | S-618 | Wire and cable | National Electrical Manufacturers Assoc. |
| Value of inventories | | | |
| Value of net sales | S-620 | Wire and cable Magnet wire | National Electrical Manufacturers Assoc. |
| Domestic net sales billed | S-624 | Building wire and cable | National Electrical Manufacturers Assoc. |
| Domestic net sales billed | S-626 | Flexible (portable) cord | National Electrical Manufacturers Assoc. |
| Value and quantity of sales | S-632 | Flexible and appliance wire Magnet wire | National Electrical Manufacturers Assoc. |

| Type of Information | Reporting Form | Products and Subjects Included | To Whom Submitted |
|-------------------------------------------------------------|----------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------|
| Domestic net sales billed | S-636 | Portable molded rubber sheathed cord and cable | National Electrical Manufacturers Assoc. |
| Domestic net sales billed | S-638 | Rubber and thermoplastic power and control cable | National Electrical Manufacturers Assoc. |
| Value of net sales | FS | Steel rigid conduit Steel EMT Aluminum rigid conduit Aluminum EMT Magnet wire Building wire and cable Rubber thermoplastic and varnished cloth cable Portable molded rubber sheathed cord and cable Flexible and appliance wire | National Electrical Manufacturers Assoc. |
| [fols. 3573-3727] | | | |
| Sales value | BC 61 F | All products fabricated from aluminum, 1954 | U.S. Department of Commerce |
| Sales value | CB 51 C 1 | All products fabricated from aluminum, 1958 | U.S. Department of Commerce |
| Consumption of materials | 6-1115-MS | Primary brass and copper melts | U.S. Department of Interior, Bureau of Mines |
| Analysis of copper consumption | N-1(1255) | Copper | U.S. Copper Assoc. |
| Output | DD-404 | Rod | U.S. Department of Defense |
| Maximum production capabilities | | Bare wire | |
| Plant description including production equipment | | Weatherproof Magnet wire Building wire Thermoplastic, insulated Spiral 4 | |
| Tentative schedule of production and request for allocation | DD-406 | WD-1 (field wire) Spiral 4 | U.S. Department of Army |
| Renewal agreement | DD-406(a) | WD-1 (field wire) Spiral 4 | Bureau of Ordnance Army Signal Corps Agencies |
| Tentative schedule of production and request for allocation | | | |

[fol. 3728]

Interrogatory 61

61 (A) For each major type of each aluminum wire or cable product offered for sale at any time since January 1, 1958 by Alcoa, Rome, or Rea Magnet Wire Company

- (i) identify four representative sizes which are four of the most widely sold by wire and cable manufacturers;
- (ii) with respect to each type and size of each aluminum product identified in answer to subdivision (i) give the copper product and its type and size which normally would be used if the said type and size of aluminum product were not used;
- (iii) for each type and size of aluminum product identified in answer to subdivision (i), and for the corresponding copper type and size identified in answer to subdivision (ii), give the list price^s (identifying sources) as of:
 - (a) January 1 of each year from 1950 through 1959,
 - (b) July 1, 1959,
 - (c) October 1, 1959,
 - (d) January 1, 1960,
 - (e) April 1, 1960,
 - (f) July 1, 1960,
 - (g) October 1, 1960,
 - (h) January 1, 1961.

(B) Describe the method by which the copper size corresponding to any specified aluminum size is determined, and state and describe exceptions to or limitations on the general applicability of such method.

Answer to Interrogatory 61

61. (A) The following charts show the prices prevailing on the specified dates for representative sizes of conductor wire and cable products made with copper and with aluminum as the conductor metal.

BARE CABLE, COPPER and BARE ACSR

1227

List prices per thousand feet.

| Date | Copper #6 Sol. HD, CLS | Aluminum 4 ACSR 7/1 | Copper #2 - 7 str. HD, RLS | Aluminum 1/0 ACSR 6/1 | Copper #4/0 - 7 str. HD, RLS | Aluminum ACSR 336.4 MCM 26/7 | Copper 500 MCM 37 Str. HD, RLS | Aluminum ACSR 795 MCM 26/7 |
|---------|------------------------------|---------------------------|----------------------------------|-----------------------------|------------------------------------|---------------------------------------|-----------------------------------------|-------------------------------------|
| 1/1/50 | 19.09 | 15.22 | 51.80 | 32.19 | 161.09 | 115.56 | 386.30 | 248.89 |
| 1/1/51 | 25.73 | 17.11 | 69.43 | 36.34 | 216.60 | 129.55 | 518.32 | 280.61 |
| 1/1/52 | 25.73 | 17.11 | 69.43 | 36.34 | 216.60 | 129.55 | 518.32 | 280.61 |
| 1/1/53 | 29.13 | 17.97 | 78.14 | 38.16 | 244.35 | 136.03 | 583.94 | 294.61 |
| 1/1/54 | 31.18 | 19.22 | 83.39 | 40.51 | 261.06 | 143.07 | 623.46 | 307.41 |
| 1/1/55 | 29.98 | 19.73 | 80.31 | 41.38 | 251.27 | 146.77 | 600.30 | 313.98 |
| 1/1/56 | 42.30 | 21.47 | 111.88 | 45.45 | 351.83 | 159.74 | 838.08 | 344.61 |
| 1/1/57 | 37.18 | 24.09 | 98.76 | 51.26 | 310.04 | 178.72 | 739.26 | 387.28 |
| 1/1/58 | 33.98 | 23.02 | 90.56 | 48.83 | 283.92 | 156.45 | 677.50 | 405.33 |
| 1/1/59 | 31.66 | 22.15 | 84.41 | 46.94 | 264.33 | 165.52 | 631.18 | 355.44 |
| 7/1/59 | 33.98 | 20.03 | 90.56 | 42.38 | 283.92 | 150.75 | 677.50 | 321.09 |
| 10/1/59 | 34.38 | 20.03 | 91.59 | 42.38 | 287.18 | 150.75 | 685.22 | 321.09 |
| 1/1/60 | 35.58 | 21.48 | 96.71 | 45.81 | 303.51 | 160.34 | 723.82 | 343.73 |
| 4/1/60 | 35.58 | 21.48 | 96.71 | 45.81 | 303.51 | 160.34 | 723.82 | 343.73 |
| 7/1/60 | 35.58 | 21.48 | 96.71 | 45.81 | 303.51 | 160.34 | 723.82 | 343.73 |
| 10/1/60 | 35.58 | 21.87 | 96.71 | 46.80 | 303.51 | 163.53 | 723.82 | 351.28 |
| 1/1/61 | 33.18 | 21.87 | 88.51 | 46.80 | 277.39 | 163.53 | 626.06 | 336.30 |

List prices per thousand feet

| Date | Copper #2 - 7 str. HD. 3/64 | Aluminum 1/0 ACSR 6/1 | Copper 4/0 - 7 str. HD. 4/64 | Aluminum 336.4 19 str. | Copper #4 - 7 str. HD. 3/64 | Aluminum #2 ACSR 6/1 | Copper #2 - 7 str. HD. 3/64 | Aluminum 1/0 - 7 str. |
|---------|-----------------------------------|-----------------------------|------------------------------------|------------------------------|-----------------------------------|----------------------------|-----------------------------------|-----------------------------|
| | Rolene | Polyeth. | Rolene | Polyeth. | Roprene | Neoprene | Roprene | Neoprene |
| 1/1/50 | 73.03 | | 209.20 | | 46.83 | | 73.03 | |
| 1/1/51 | 94.36 | | 261.20 | | 60.77 | | 94.36 | |
| 1/1/52 | 94.36 | | 261.20 | | 60.77 | | 94.36 | |
| 1/1/53 | 103.14 | 93.04 | 287.20 | | 66.30 | 56.60 | 103.14 | 76.24 |
| 1/1/54 | 110.37 | 86.60 | 308.64 | 216.80 | 70.85 | 52.70 | 110.37 | 71.05 |
| 1/1/55 | 107.00 | 84.90 | 298.64 | 213.00 | 68.73 | 51.60 | 107.00 | 69.60 |
| 1/1/56 | 139.40 | 90.00 | 394.64 | 231.00 | 89.13 | 55.00 | 139.40 | 74.00 |
| 1/1/57 | 126.37 | 99.00 | 368.64 | 257.00 | 81.05 | 49.00 | 126.37 | 83.00 |
| 1/1/58 | 118.47 | 88.00 | 344.64 | 228.00 | 75.95 | 55.00 | 118.47 | 73.00 |
| 7/1/59 | 112.42 | 79.00 | 326.72 | 205.00 | 72.14 | 49.50 | 112.42 | 66.00 |
| 7/1/59 | 118.85 | 71.00 | 345.76 | 185.00 | 76.19 | 44.50 | 118.85 | 59.00 |
| 10/1/59 | 118.85 | 71.00 | 345.76 | 185.00 | 76.19 | 44.50 | 118.85 | 59.00 |
| 1/1/60 | 118.85 | 76.50 | 345.76 | 200.50 | 76.19 | 48.00 | 118.85 | 64.00 |
| 4/1/60 | 118.85 | 71.00 | 345.76 | 185.00 | 76.19 | 44.50 | 118.85 | 59.00 |
| 7/1/60 | 118.85 | 71.00 | 345.76 | 185.00 | 76.19 | 44.50 | 118.85 | 59.00 |
| 10/1/60 | 121.90 | 73.50 | 354.80 | 191.50 | 78.11 | 46.00 | 121.90 | 61.00 |
| 1/1/61 | 115.83 | 73.50 | 336.80 | 191.50 | 74.29 | 46.00 | 115.83 | 61.00 |

MULTIPLEX SERVICE CABLES

1229

List prices per thousand feet

| Date | Copper Polyeth. 2 x #4 7 str. 1/c 4-7 | Aluminum Polyeth. #2 - AA 1/c 4-7 | Copper Polyeth. 2 x #6 7 str. 1/c 6-7 | Aluminum #4 ACSR Polyeth. 1/c 6-7 | Copper Polyeth. 2/c #4 7 str. 1/c 6-7 | Aluminum #2 ACSR Polyeth. reduced neutral 1/c 6-7 | Copper Neopr. 2/c #6 7 str. 1/c 6-7 | Aluminum #4 ACSR Neopr. 1/c 6-7 |
|---------|---------------------------------------------------|--------------------------------------------|---------------------------------------------------|--------------------------------------------|---------------------------------------------------|------------------------------------------------------------------|-------------------------------------------------|------------------------------------------|
| 1/1/50 | | | | | | | 121 | |
| 1/1/51 | | | | | | | 150 | |
| 1/1/52 | | | | | | | 150 | |
| 1/1/53 | | 200 | | 131 | | 178 | 175 | 142.02 |
| 1/1/54 | | 157.30 | | 112 | | 152.15 | 199 | 121.40 |
| 1/1/55 | | 149 | | 106 | | 145 | 178 | 115 |
| 1/1/56 | (1) | 146 | | 112 | | 142 | 200 | 121 |
| 1/1/57 | 243 | 164 | 176 | 125 | 225 | 159 | 184 | 135 |
| 1/1/58 | 217 | 145 | 159 | 111 | 202 | 141 | 167 | 120 |
| 1/1/59 | 216 | 131 | 159 | 100 | 201 | 127 | 167 | 108 |
| 7/1/59 | 228 | 118 | 166 | 90 | 211 | 114 | 174 | 97 |
| 10/1/59 | 228 | 113.75 | 166 | 86.75 | 211 | 110 | 174 | 93.50 |
| 1/1/60 | 234 | 123.25 | 170 | 93.25 | 217 | 118.75 | 178 | 100.50 |
| 4/1/60 | 234 | 113.75 | 170 | 86.75 | 217 | 110 | 178 | 93.50 |
| 7/1/60 | 234 | 113.75 | 170 | 86.75 | 217 | 110 | 178 | 93.50 |
| 10/1/60 | 234 | 117.50 | 170 | 90 | 217 | 114 | 178 | 97 |
| 1/1/61 | 222 | 117.50 | 163 | 90 | 206 | 114 | 171 | 97 |

(1) First price sheet issued Feb. 23, 1956.

{fol. 3732}

TW BUILDING WIRE

List prices per thousand feet

| Date | Copper Size 6 | Aluminum Size 4 | Copper Size 1 | Aluminum Size 2/0 | Copper Size 2/0 | Aluminum Size 4/0 | Copper Size 4/0 | Aluminum Size 350 C. M. |
|---------|------------------|--------------------|------------------|----------------------|--------------------|----------------------|--------------------|----------------------------|
| 1/1/50 | 46.60 | | 126 | | 184 | | 263 | |
| 1/1/51 | 72.60 | | 201 | | 285 | | 425 | |
| 1/1/52 | 76.70 | | 212 | | 301 | | 450 | |
| 1/1/53 | 76.70 | | 212 | | 301 | | 450 | |
| 1/1/54 | 75.30 | | 212 | | 314 | | 474 | |
| 1/1/55 | 70.80 | | 195 | | 288 | | 431 | |
| 1/1/56 | 94.00 | | 263 | | 391 | | 585 | |
| 1/1/57 | 102 | | 284 | | 421 | | 630 | |
| 1/1/58 | 78.50 | | 218 | | 325 | | 485 | |
| 1/1/59 | 79.40 | (1) 49.20 | 216 | 136 | 310 | 202 | 461 | 352 |
| 7/1/59 | 76.20 | (1) 49.20 | 213 | 136 | 310 | 202 | 461 | 352 |
| 10/1/59 | 81.60 | (2) 49.20 | 228 | 136 | 332 | 202 | 494 | 352 |
| 1/1/60 | 85.70 | 54.10 | 239 | 150 | 349 | 222 | 518 | 387 |
| 4/1/60 | 85.70 | 54.10 | 239 | 150 | 349 | 222 | 518 | 387 |
| 7/1/60 | 65.30 | 54.10 | 182 | 150 | 265 | 222 | 394 | 387 |
| 10/1/60 | 65.30 | 54.10 | 182 | 150 | 265 | 222 | 394 | 387 |
| 1/1/61 | 65.30 | 54.10 | 182 | 150 | 265 | 222 | 394 | 387 |

(1) Kaiser sheet Sect. 10-103, page 2, dated June 30, 1958.

(2) Kaiser sheet Sect. 3, page 6, dated August 25, 1959.

RHW BRAIDED BUILDING WIRE

1231

List prices per thousand feet

| Date | Copper Size 6 (1) | Aluminum Size 4 | Copper Size 1 (1) | Aluminum Size 2/0 | Copper Size 2/0 (1) | Aluminum Size 4/0 | Copper Size 4/0 (1) | Aluminum Size 350 C.M. |
|-----------|-------------------------|--------------------|-------------------------|----------------------|---------------------------|----------------------|---------------------------|---------------------------|
| Jan. 1950 | 51.20 | | 129 | | 193 | | 284 | |
| Jan. 1951 | 79.70 | | 200 | | 299 | | 463 | |
| Jan. 1952 | 84.20 | | 212 | | 316 | | 490 | |
| Jan. 1953 | 84.20 | | 212 | | 316 | | 490 | |
| Jan. 1954 | 83.30 | | 228 | | 335 | | 526 | |
| Jan. 1955 | 78.80 | | 213 | | 313 | | 487 | |
| Jan. 1956 | 104 | | 285 | | 422 | | 657 | |
| Jan. 1957 | 112 | | 308 | | 455 | | 709 | |
| Jan. 1958 | 85.50 | | 236 | | 340 | | 544 | |
| Jan. 1959 | 86.20 | (2) 53.50 | 233 | 148 | 332 | 216 | 515 | 405 |
| 7/1/59 | 83.70 | (2) 53.50 | 230 | 148 | 330 | 216 | 516 | 405 |
| 10/1/59 | 89.10 | (3) 53.50 | 245 | 148 | 351 | 216 | 549 | 405 |
| 1/1/60 | 93.40 | 58.90 | 257 | 163 | 368 | 238 | 576 | 446 |
| 4/1/60 | 93.40 | 63.40 | 257 | 163 | 368 | 238 | 576 | 446 |
| 7/1/60 | 71.70 | 63.40 | 197 | 163 | 282 | 238 | 442 | 446 |
| 10/1/60 | 71.70 | 63.40 | 197 | 163 | 282 | 238 | 442 | 446 |
| 1/1/61 | 71.70 | 63.40 | 197 | 163 | 282 | 238 | 442 | 446 |

(1) Indicates RH price.

(2) Kaiser price sheet Sect. 10-103, dated June 30, 1958.

(3) Kaiser sheet Sect. 3, page 5, dated August 25, 1959.

[60, 3734]

TYPE SE STYLE U SERVICE ENTRANCE CABLES

List prices per thousand feet

| Date | Copper 3c #6 | Alum. (1) 3c #4 | Copper 3c #3 | Alum. (1) 3c #2 | Copper 3c #1/0 | Alum. (1) 3c #2/0 | Copper 3c #3/0 | Alum. (1) 3c #4/0 |
|---------|-----------------|--------------------|-----------------|--------------------|-------------------|----------------------|-------------------|----------------------|
| 1/1/60 | 317 | 235 | 533 | 303 | 1240 | 520 | | 704 |
| 4/1/60 | 317 | 235 | 533 | 303 | 1240 | 520 | | 704 |
| 7/1/60 | 241 | 235 | 407 | 303 | 947 | 520 | | 704 |
| 10/1/60 | 241 | 235 | 407 | 303 | 947 | 520 | | 704 |
| 1/1/61 | 241 | 235 | 407 | 303 | 947 | 520 | 1432(2) | 704 |

(1) Not offered in aluminum prior to December 1, 1959.

(2) Anaconda Wire & Cable price sheet, January 16, 1961.

Note: The National Electric Code governs generally the selection and installation of SE conductors. Type SE-U service entrance cable is one of the commonly used types of cables used for this purpose. We have selected four representative sizes of conductor in both aluminum and copper to provide the most commonly used ratings for services as they are shown below. Since SE cables are usually used only in short lengths, the selection of comparable copper products is in this case based upon ampacity rather than resistivity.

| Rating | Copper | Aluminum |
|------------|---------|----------|
| 60 ampere | 3c #6 | 3c #4 |
| 100 ampere | 3c #3 | 3c #2 |
| 150 ampere | 3c #1/0 | 3c #2/0 |
| 200 ampere | 3c #3/0 | 3c #4/0 |

1233

[62.3735]

600-VOLT RUBBER POWER CABLE (RRD)

List prices per thousand feet

| Date | Copper Size 6 | Aluminum Size 4 | Copper Size 1 | Aluminum Size 2/0 | Copper Size 2/0 | Aluminum Size 4/0 | Copper Size 4/0 | Aluminum Size 350 C.M. |
|---------|------------------|--------------------|------------------|----------------------|--------------------|----------------------|--------------------|---------------------------|
| 1/1/50 | (1) | | | | | | | |
| 1/1/51 | 100 | | 246 | | 328 | | 482 | |
| 1/1/52 | 106 | | 260 | | 346 | | 509 | |
| 1/1/53 | 106 | | 260 | | 346 | | 509 | |
| 1/1/54 | 118 | | 293 | | 392 | | 589 | |
| 1/1/55 | 118 | | 293 | | 392 | | 589 | |
| 1/1/56 | 141 | | 365 | | 497 | | 751 | |
| 1/1/57 | 156 | | 390 | | 526 | | 797 | |
| 1/1/58 | 117 | | 292 | | 394 | | 596 | |
| 1/1/59 | 124 | (2) 77.30 | 301 | 192 | 386 | 253 | 575 | 470 |
| 7/1/59 | 121 | (2) 77.30 | 292 | 192 | 382 | 253 | 573 | 470 |
| 10/1/59 | 129 | (3) 77.30 | 312 | 192 | 409 | 253 | 613 | 470 |
| 1/1/60 | 135 | 85.00 | 327 | 211 | 430 | 278 | 644 | 470 |
| 4/1/60 | 135 | 85.00 | 327 | 211 | 430 | 278 | 644 | 470 |
| 7/1/60 | 104 | 85.00 | 251 | 211 | 328 | 278 | 491 | 470 |
| 10/1/60 | 104 | 85.00 | 251 | 211 | 328 | 278 | 491 | 470 |
| 1/1/61 | 104 | 85.00 | 251 | 211 | 328 | 278 | 491 | 470 |

(1) Prior sheet dated 4/1/49 but only covered sizes 14 through 8.

(2) Kaiser sheet Sect. 10-103, dated June 30, 1958.

(3) Kaiser sheet Sect. 4, page 5, dated August 25, 1959.

[fol. 3736]

5 KV SHIELDED RUBBER POWER CABLE (Class B Strand)

1234

List prices per thousand feet

| Date | Copper Size 6 | Aluminum Size 4 | Copper Size 1 | Aluminum Size 2/0 | Copper Size 2/0 | Aluminum Size 4/0 | Copper Size 4/0 | Aluminum Size 350 C. M. |
|---------|------------------|--------------------|------------------|----------------------|--------------------|----------------------|--------------------|----------------------------|
| 1/1/50 | | | | | | | | |
| 1/1/51 | | | | | | | | |
| 1/1/52 | | | | | | | | |
| 1/1/53 | | | | | | | | |
| 1/1/54 | 396 | | 665 | | 851 | | 1080 | |
| 1/1/55 | 396 | | 665 | | 851 | | 1080 | |
| 1/1/56 | 437 | | 772 | | 976 | | 1258 | |
| 1/1/57 | 445 | | 774 | | 973 | | 1247 | |
| 1/1/58 | 455 | | 779 | | 973 | | 1231 | |
| 1/1/59 | 477 | (1) 369 | 811 | 629 | 1017 | 786 | 1284 | 1136 |
| 7/1/59 | 479 | (1) 369 | 818 | 629 | 1029 | 786 | 1302 | 1136 |
| 10/1/59 | 499 | (1) 369 | 849 | 629 | 1069 | 786 | 1348 | 1136 |
| 1/1/60 | 500 | (1) 369 | 853 | 629 | 1076 | 786 | 1359 | 1136 |
| 4/1/60 | 500 | (1) 369 | 853 | 629 | 1076 | 786 | 1359 | 1136 |
| 7/1/60 | 417 | (1) 369 | 656 | 629 | 802 | 786 | 1063 | 1136 |
| 10/1/60 | 417 | 354 | 656 | 542 | 802 | 642 | 1063 | 979 |
| 1/1/61 | 414 | 354 | 647 | 542 | 788 | 642 | 1041 | 979 |

(1) Kaiser price sheet.

[fol. 3737]

Magnet Wire

Prior to August 16, 1960, Rome did not have a list price for magnet wire made with aluminum conductor. Prices announced on that date and still in effect for representative types and sizes of aluminum magnet wire sold by Rome are as follows:

| Type | Size | Price Per Pound |
|------------------------------------------------------------------------------------|---------------|-----------------|
| (1) Rectangular, double paper, single cotton wrapped | 324" x .5" | 90.35¢ |
| | .020" x .5" | 167.2¢ |
| (2) Rectangular, heavy Formvar | 204" x .675" | 98.2¢ |
| | .032" x .675" | 162.75¢ |
| (3) Rectangular, double glass or double-glass dacron | 249" x .688" | 139.95¢ |
| | .030" x .688" | 219.8¢ |
| (4) Rectangular, double glass or double-glass dacron with silicone treated varnish | 249" x .688" | 144.90¢ |
| | .030" x .688" | 232.85¢ |

Prior to September 11, 1958, Alcoa did not have a list price for magnet wire made with aluminum conductor. Prices in effect as of January 1, 1959, and each other designated date, for representative types and sizes of round aluminum magnet wire sold by Alcoa are as follows:

Film Insulated-Heavy Thickness
(Prices are per 100 pounds)

| Dates | # 12 | # 16 | # 20 | # 24 |
|---------|-------|--------|--------|--------|
| 1/1/59 | 92.67 | 110.09 | 122.53 | 143.86 |
| 10/1/59 | 91.50 | 100.90 | 116.40 | 142.40 |
| 1/1/60 | 93.50 | 102.90 | 118.40 | 144.40 |
| 4/1/60 | " | " | " | " |
| 7/1/60 | " | " | " | " |
| 10/1/60 | " | " | " | " |
| 1/1/61 | " | " | " | " |

[fol. 3738]

| | | | | |
|---------|-------|-------|--------|--------|
| 1/1/59 | 86.15 | 99.58 | 109.83 | 128.80 |
| 10/1/59 | 85.30 | 93.40 | 104.60 | 124.50 |
| 1/1/60 | 87.30 | 95.40 | 106.60 | 126.50 |
| 4/1/60 | " | " | " | " |
| 7/1/60 | " | " | " | " |
| 10/1/60 | " | " | " | " |
| 1/1/61 | " | " | " | " |

Although copper magnet wire is fully substitutable for aluminum magnet wire, users do not make such substitution solely on the basis of equal current carrying capacity. A user considering the use of copper in place of aluminum magnet wire for a particular application has to consider space, load, temperature, and other operating conditions.

of the equipment in which the magnet wire is to be used. He may, for example, find it advantageous to use a small copper wire with many windings rather than a larger copper wire with correspondingly fewer windings. Accordingly, it is impossible to identify the type and size of copper product that would normally be used if the aluminum products listed herein were not used.

(B) Generally, in substituting copper conductor for aluminum conductor the principal consideration is to secure equal current carrying capacity. This is generally secured by substituting a copper conductor two AWG sizes smaller than the aluminum conductor. There are situations, however, where mechanical strength, weight of the wire or cable, flex life, environmental conditions such as corrosive atmospheres, or temperature rise in the conductor with reference to the type of insulation, may require deviations from the two AWG size difference.

[fols. 3739-3740] As indicated in the answer to (A) with respect to Service Entrance Cable, where only short lengths of cable are usually involved, the choice of copper equivalent is based upon the service rating to be supplied.

[fol. 3741]

Interrogatory 63

63. With respect to each of the following:

- (A) EC aluminum pig
- (B) EC aluminum ingot
- (C) EC aluminum rod
- (D) any combination of two or more of (A), (B) and (C)
- (E) EC aluminum pig used in the production of
 - (1) aluminum conductor wire and cable
 - (2) aluminum conductor other than wire and cable
 - (3) other products
- (F) EC aluminum ingot used in the production of (1) aluminum conductor wire and cable, (2) aluminum conductor other than wire and cable, (3) other products
- (G) EC aluminum rod used in the production of (1) aluminum conductor wire and cable, (2) aluminum

conductor other than wire and cable (3) other products

(H) any combination of two or more of (E) (F) and (G)

(i) state for each of the years 1954 through 1960, and for each quarter of 1960

(a) the total shipments, the total sales and the total production thereof, in quantity and dollar value, in the United States;

(b) the shipments thereof, the sales thereof and the production thereof, in quantity and dollar value, by each company.

(ii) give the name and address of each company producing and selling each, (a) prior to April 1, 1959, (b) as of September 1, 1960, and (c) as the latest date for which information is available.

[fol. 3742] (iii) give the location, for each company, of each plant where each is produced, and state the capacity of each such plant for the manufacture of each.

(iv) state the relative extent to which EC aluminum pig, ingot, and rod is used in each category specified in (E), (F), and (G).

Answer to Interrogatory 63

(i) (a) Defendants are without knowledge as to total shipments, sales or production in the United States of any of the products listed in (A)-(H) of this Interrogatory 63.

(i) (b) With the exception of information supplied by plaintiff in answer to defendants' Interrogatory 5(d) (ii), defendants are without knowledge as to shipments, sales or production of any of the products listed in (A)-(H) for companies other than Alcoa and Rome. Data for Alcoa and Rome for each of the designated periods are set forth in Table V.

(ii) To the best of defendants' knowledge, the following companies manufacture EC aluminum pig and ingot at the present time, and did so prior to April 1, 1959 and as of September 1, 1960:

Alcoa

Plants: Badin, North Carolina; Cressona, Pennsylvania; Lafayette, Indiana; Massena, New York; Rockdale, Texas; and Vancouver, Washington.

Aluminum Limited

Plants: Arvida, Quebec; Isle Maligne, Quebec; Kitimat, British Columbia; Shawinigan Falls, Quebec; Beauharnois, Quebec.

[fol. 3743] Anaconda Co.

Plants: Columbia Falls, Mont.

Harvey Aluminum, Inc.

Plants: The Dalles, Ore.

Kaiser Aluminum & Chemical Corp.

Plants: Ravenswood, W. Va., Spokane, Wash.

Ormet Corp.

Plants: Hannibal, Ohio.

Reynolds Metals Co.

Plants: Arkadelphia, Ark.; Listerhill, Ala.; Massena, N. Y.; Jones Mills, Ark.; Longview, Wash.; San Patricio, Tex.; Troutdale, Ore.

To the best of defendants' knowledge, each of the following companies (except Rome) manufacturers E. C. aluminum rod at the present time, and did so prior to April 1, 1959 and as of September 1, 1960:

Alcoa

Plants: Massena, N. Y.; Vancouver, Wash.

Anaconda Co.

Plant: Columbia Falls, Mont.

Essex Wire Corp.

Plant: Goshen, Ind.

General Cable Corp.

Plants: St. Louis, Mo.; Tampa, Fla.

Kaiser Aluminum & Chemical Corp.

Plant: Newark, Ohio

Olin Mathieson Chemical Corp. (Southern Electric)

Plant: Chattanooga, Tenn.

Reynolds Metals Co.

Plant: Listerhill, Ala.

[fols. 3744-3825] Rome Cable Corp.

Plant: Rome, N. Y. (acquired by Alcoa March 31, 1959; suspended the manufacture of E. C. aluminum rod, April 1960).

Southwire Co.

Plant: Carrollton, Ga.

(iii) The requested plant locations are given in the answer to (ii) of this Interrogatory 63. Defendants have no information with respect to the capacity of each such plant, for each product, for companies other than Alcoa and Rome. With respect to the plants of Alcoa and Rome, because all of the facilities used in the production of E. C. aluminum pig, ingot, and rod are also used in the production of other alloys not associated with electrical conductor, it is impossible to arrive at any meaningful capacity figures.

(iv) Defendants have no information with respect to the relative extent to which E. C. aluminum pig, ingot and rod is used in each category specified in (E), (F), and (G) of this Interrogatory 63 except as indicated in Table V.

[fol. 3826]

Interrogatory 69

69. For each of the years 1950, 1952, and 1954 through 1960, and for each quarter of 1959 and 1960 state the total sales (in quantity and dollars) of overhead conductor wire and cable by (a) all companies in the United States, (b) Alcoa, (c) Rome, and (d) each other company, together with a breakdown showing:

(A) the amount thereof manufactured from (i) aluminum (ii) copper

- (B) the various types of aluminum conductor and the sales of each in pounds and dollars
- (C) the various types of copper conductor and the sales of each in pounds and dollars.

Answer to Interrogatory 69

There is no recognized product known as "overhead conductor wire and cable." The following conductor wire and cable products listed in defendants' answer to Interrogatory 44 can be used in overhead applications:

- (1) Bare conductor wire
- (2) Bare conductor cable
- (3) ACSR
- (4) Weatherproof wire
- (5) Service drop cable
- (6) Power cable under 601 volts
- (7) Power cable 601 volts and higher
- (8) Communication wire and cable

(1) Bare Conductor Wire:

As defendants' answer to Interrogatories 6, 7, and 9 indicates, bare aluminum conductor wire is not generally used in overhead applications; bare copper wire may be used [fol. 3827] in such applications.

(a) Defendants' knowledge as to the total sales of bare copper wire by all companies in the United States is derived solely from statistics published by the Bureau of the Census in its 1954 and 1958 Censuses of Manufactures. Since substantial quantities of bare copper wire sold for further fabrication are included in these statistics, they do not provide any basis for measuring the amount of such wire sold for overhead use. Defendants do not admit the accuracy or reliability of these statistics which are well known and readily available to plaintiff.

(b) Alcoa, prior to its acquisition of Rome, did not manufacture any copper conductor products. Alcoa has not sold any significant quantity of bare aluminum

conductor wire for use in overhead applications in any of the periods in question.

(c) To the best of defendants' knowledge, bare aluminum conductor wire sold by Rome during the periods in question was not used to any significant extent in overhead applications. Table VII sets forth Rome's total sales of bare copper wire for each of the periods in question and, to the extent that it is possible to do so, indicates the proportion of such bare copper wire that was used in overhead applications.

(d) Defendants are without knowledge as to the total sales of bare conductor wire for use in overhead applications by any company other than Alcoa and Rome for any of the periods in question.

(2) Bare Conductor Cable and (3) ACSR:

As indicated in defendants' answer to Interrogatories 6, 7, and 9, bare conductor cable, using either copper or aluminum as the conductor metal, and ACSR can be used in overhead applications.

(a) Defendants' knowledge as to the total sales by all companies in the United States of bare conductor cable [fol. 3828] and ACSR is derived solely from statistics published by BDSA and the Bureau of the Census. The Censuses of Manufactures for 1954 and 1958 purport to show total United States shipments of bare copper cable and of bare aluminum cable and ACSR. The BDSA "Facts for Industry" and "Current Industrial Reports" purport to show the United States shipments of ACSR and bare aluminum cable for each of the years 1954 through 1960, and for each quarter of 1959 and 1960. Neither the Bureau of the Census nor BDSA statistics purport to show the extent to which these products are used in overhead applications. Defendants do not admit the accuracy or reliability of any of these published statistics which are well known and readily available to plaintiff.

(b) Prior to its acquisition of Rome, Alcoa did not sell any bare copper cable. Alcoa's sales of bare aluminum cable and ACSR are shown in Table VII. It is defend-

ants' belief that most of such bare aluminum cable and ACSR was used in overhead applications.

(c) Table VII sets forth Rome's sales of bare conductor cable, both copper and aluminum, and ACSR and; to the extent that it is possible to do so, indicates the proportion of such products used in overhead applications.

(d) With the exception of information supplied by plaintiff in answer to defendants' Interrogatories 2 (e) (ii) and 5 (d) (ii), defendants have no knowledge as to the sales of bare conductor cable and ACSR by any company other than Alcoa and Rome.

(4) Weatherproof Wire:

This product, which may be made with either copper or aluminum as the conductor metal, is sold almost entirely for use in overhead applications.

[fol. 3829] (a) Defendants' knowledge of the total sales of weatherproof wire by all companies in the United States is derived solely from the 1954 and 1958 Censuses of Manufacturers which purport to show total United States shipments of this product. Defendants do not admit the accuracy or reliability of these statistics which are well known and readily available to plaintiff. Since the Census of Manufactures statistics do not differentiate between copper and aluminum, there are no published statistics which purport to show the amount of weatherproof wire manufactured from aluminum and from copper.

(b) Prior to its acquisition of Rome, Alcoa made no weatherproof wire using copper as the conductor metal. Alcoa's sales of weatherproof wire using aluminum as the conductor for each of the periods in question are given in Table VII.

(c) Rome's sales of weatherproof wire, both copper and aluminum, for each of the periods in question are given in Table VII.

(d) With the exception of information supplied by plaintiff in answer to defendants' Interrogatory 5 (d) (ii), defendants have no knowledge as to the sales of weatherproof wire by any company other than Alcoa and Rome.

(5) Service Drop Cable:

This product, which may be made with either copper or aluminum as the conductor metal, is sold almost entirely for use in overhead applications.

(a) Defendants' knowledge of the total United States sales of service drop cable is derived solely from the 1954 and 1958 Censuses of Manufactures which purport to show total United States shipments of this product. Defendants do not admit the accuracy or reliability of these published statistics which are well known and readily available to plaintiff. Since the Census of [fol. 3830] Manufactures does not differentiate between copper and aluminum, there are no published statistics purporting to show the amount of service drop cable manufactured from aluminum and from copper.

(b) Prior to its acquisition of Rome, Alcoa did not sell service drop cable using copper as the conductor metal. Alcoa's sales of service drop cable using aluminum as the conductor metal for each of the periods in question are given in Table VII.

(c) Rome's sales of service drop cable, both copper and aluminum, for each of the periods in question are given in Table VII.

(d) With the exception of information supplied by plaintiff in answer to Interrogatory 5 (d) (ii), defendants have no knowledge as to the sales of service drop cable by any company other than Alcoa and Rome.

(6) Power Cable Under 601 Volts and (7) Power Cable 601 Volts and Higher:

Certain types of insulated power cable are used in overhead applications. These may be made using either copper or aluminum as the conductor metal.

(a) Published statistics with respect to total United States shipments of power cable for each of the periods in question do not indicate the amount of power cable that is used in overhead applications, nor do such statistics indicate the amounts made from aluminum and from copper. Defendants, therefore, are without knowledge as to the total sales by all companies in the United States of power cable used overhead or as to the amounts thereof made from aluminum and from copper.

(b) Alcoa, prior to its acquisition of Rome, did not produce any power cable.

(c) Table VII sets forth Rome's sales of power cable, both copper and aluminum, for each of the periods in question and, to the extent it is possible to do so, indicates the proportion thereof that was used in overhead applications.

(d) Defendants are without knowledge as to the total sales by any company other than Alcoa and Rome of power cable, either copper or aluminum, for use in overhead applications.

(8) Communication Wire and Cable:

Certain types of communication wire and cable are used in overhead applications. To the best of defendants' knowledge, this consists of copper telephone cable.

(a) Defendants' knowledge of the total United States sales of communication wire and cable used in overhead applications is derived solely from the 1954 and 1958 Censuses of Manufactures which purport to show total United States shipments of telephone cable. Defendants do not admit the accuracy or reliability of these pub-

lished statistics which are well known and readily available to plaintiff.

(b) and (c) Neither Aleco nor Rome has ever manufactured communication wire and cable for use in overhead applications.

(d) Defendants have no knowledge as to the sales of communication wire and cable used in overhead applications by any other company.

[fol. 3835]

Table II

On the basis of defendants' present knowledge, and subject to revision and amendment as defendants' trial preparation progresses, the attached table shows the following:

- (1) the name and address of each company which has produced and sold the designated conductor wire and cable products since prior to April 1, 1959;
- (2) whether the listed companies manufacture the designated products with copper, (C), aluminum, (A), or either, (CA), as the conductor metal;
- (3) the location of each plant of each of the listed companies, and, insofar as defendants' have knowledge, the conductor wire and cable products made at each such plant; and
- (4) whether any of the listed companies has either commenced or ceased the production and sale of any of the designated products (a) between April 1, 1959 and September 1, 1960 and (b) between September 1, 1960 and April 1, 1961.

Amphenol-Borg Electronics Corp., Maywood, Ill.

| Bare Wire | Bare Cable | ACSR | Communication | Appliance wire and cord | Magnet | Power under 601 | Power over 601 | Signal | Control | Weatherproof | Building | Service cable | Service entrance | Automotive and Aircraft | Marine | Portable Cords and Cables |
|-----------|--------------|-------------|---------------|-------------------------|---------------|-----------------|----------------|--------|---------|--------------|----------|---------------|------------------|-------------------------|--------|---------------------------|
| | A A CA | A A A | C | C | CA | CA | CA | C | C | A CA | CA | A CA | CA | | | CCA |
| C | | | | | CA CA C | | | | | | | | | | | |
| C | | | | C | | C | C | | | C | C | | C | | | C |

[illegible]

[fol. 3838]

Bradford Kyle & Company, Plymouth, Mass.

Braud, William & Co., Inc.

Division of American Enka, Enka, N.C.
Williamantic, Conn., Santa Monica, Calif.

Bridgeport Brass Company

Housatonic - Bridgeport, Conn., Warren, Ohio

Bridgeport Insulated Wire

Bridgeport, Conn., Stratford, Conn.

C&W Insulated Wire Company, Fort Wayne, Ind.

Calcon Mfg. Company, Washington, Pa.
Subsidiary of Avis Industrial Corp.

Camden Wire Company, Camden, N.Y.

Central Cable Corp., Jersey Shore, Pa.
Freeport, Illinois, Atlanta, Ga.Chester Cable Corp., Chester, New York
Subsidiary of Tennessee Corp.Circle Wire & Cable, Maspeth, N.Y.
Subsidiary of Cerro Corp., New York
Maspeth, N.Y., Hicksville, L.I., N.Y.

Cleveland Insulated Wire Company, Cleveland, Ohio

Coast Cable Company, Los Angeles, Calif.

Collyer Insulated Wire Company, Pawtucket, R.I.

| Bare Wire | Bare Cable | ACSR | Communication | Appliance wire and cord | Magnet | Power under 601 | Power over 601 | Signal | Control | Weatherproof | Building | Service cable | Service entrance | Automotive and Aircraft | Marine | Portable Cords and Cables |
|-----------|------------|------|---------------|----------------------------|--------|-----------------|----------------|--------|---------|--------------|----------|---------------|------------------|----------------------------|--------|------------------------------|
| | | | | C | | | | | | | | | | C | | |
| C | | | | | | | | | | | | | | | | |
| | | | | | C | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | |
| | C | C | | | | | | | | | | | | | | |
| | CA | CA | A | | | | | | | | CA | | CA | | | |
| | | | | | | | | | | | | | | | | |
| | | | | C | | | | | | | | | | | | |
| | | | | C | | | | | | | | | | | | |
| C | C | | | | | CA | CA | | | CA | CA | CA | CA | | | C C |
| | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | |
| C | C | | | C | | CA | CA | C | C | CA | CA | CA | CA | | | C C |

[illegible]

[illegible]

Indiana Steel & Wire Co., Muncie, Ind.

Rome, Georgia

Kellogg Switchboard & Supply Division, Chicago, Ill.

[illegible]

[illegible]

Radix Wire Company, Cleveland, Ohio

[illegible]

[60L 3846]

Rego Insulated Wire Corporation, Hoboken, N.J.

Revere Corporation of America, Wallingford, Conn.
Subsidiary of Neptune Meter Company of New YorkRex Corporation, West Action, Mass.
Subsidiary of American Enka Corporation, Enka, N.C.

Reynolds Metals Company, Richmond, Va., Listerhill, Ala.

Rhode Island Insulating Wire Company, Cranston, R.I., Providence, R.I.
Subsidiary of Leviton Mfg. Co., Brooklyn, N.Y.Robert Shaw Fulton Controls
Beta Corporation, Richmond, Va.
Acro Mfg. Company, Columbus, Ohio

Rockbestos Products Corporation, New Haven, Conn.

Roebling's John A. & Sons Corporation, Trenton, N.J.
Subsidiary of Colorado Fuel & Iron Corporation
Trenton, N.J., and Roebling, N.J.

Runzel Cord & Wire Company, Chicago, Ill.

Simplax Wire & Cable Corporation, Cambridge, Mass.
Newington, N.H.
Hi Temp Wires, Westbury, N.Y., Monrovia, Calif.

Southwire Company, Carrollton, Ga.

Slopian, Arthur & Company, Bridgeport, Conn.

| Bare Wire | Bare Cable | ACSR | Communication | Appliance wire and cord | Magnet | Power under 601 | Power over 601 | Signal | Control | Weatherproof | Building | Service cable | Service entrance | Automotive and Aircraft | Marine Portable Cords and Cables |
|-----------|------------|------|---------------|----------------------------|--------|-----------------|----------------|--------|---------|--------------|----------|---------------|------------------|----------------------------|----------------------------------------|
| | | | | C | | | | | | | | | | | C |
| | | | | C | | | | | | | | | | | |
| A | A | A | | C | | | | | | CA | | A | | | |
| | | | | C | | | | | | | | | | | C |
| | | | | C | | | | | | | | | | | |
| | | | | C | | C | C | C | C | | | | | C | |
| CA | AC | A | C | C | C | CA | CA | C | C | C | GA | | C | | C |
| | | | | C | | | | | | | | | | | C |
| | | | C | C | | CA | CA | C | C | | CA | | C | | C |
| | | | C | C | | C | | | | | | | | | C |
| CA | CA | A | | | | | | | | CA | CA | CA | | | |

Times Wire & Cable Co., Wallingford, Conn.
Division of International Silver Co., Meriden, Conn.

| | |
|----------------------------------------|--------------|
| Bare Wire | C |
| Bare Cable | C |
| ACSR | |
| Communication | C |
| Appliance wire and cord | C CA C |
| Magnet | C |
| Power under 601 | |
| Power over 601 | |
| Signal | C |
| Control | C |
| Weatherproof | |
| Building | |
| Service cable | |
| Service entrance | |
| Automotive and Aircraft | |
| Marine Portable Cords and Cables | |

[illegible]

Whitney-Blake Company, Hamden, Conn.
Insulated Circuits Inc., Passaic, New Jersey
Koiled Kords, New Haven, Conn.

[illegible]

[fol. 3856]

Table III

Introduction

The following table describes the characteristics and end uses of various bare and insulated or covered wire and cable products. For the most part, these products have been made with either copper or aluminum as the conductor metal. Their end uses and construction are the same whether made with copper or with aluminum as the conductor metal. The descriptions contain references to various standards and specifications which describe properties and constructions and contain data to assist in selection and installation for end use. The following abbreviations used in the product descriptions represent the indicated organizations:

- (1) ASTM—American Society for Testing Materials
- (2) ASA—American Standards Association
- (3) IPCEA—Insulated Power Cable Engineers Association
- (4) NEMA—National Electrical Manufacturers Association
- (5) MIL—Military
- (6) REA—Rural Electrification Administration
- (7) IMSA—International Municipal Signal Association
- (8) AAR—Association of American Railroads
- (9) AEIC—Association of Edison Illuminating Companies.

Unless otherwise indicated, these standards and specifications are applicable whether copper or aluminum is used.

The use of different conductor metals will result in certain differences in the physical, electrical, and chemical characteristics of the products described herein. Physically, aluminum is lighter in weight than copper, has less tensile strength and is less flexible. These physical differences will [fol. 3851] be most evident in bare conductor products but may also be reflected in the insulated or covered wire and cable products described herein. Electrically, aluminum has approximately 61% to 62% the conductivity of copper. This electrical difference will be reflected in the products de-

scribed below; and in general, a conductor product using aluminum as the conductor metal will have to be two AWG sizes larger if resistance equal to that obtained with copper is desired. (See answer to Interrogatory 61(B).) Chemically, copper and aluminum are different elements and have certain different chemical properties. Aluminum is more subject to corrosion than copper and has a tendency, which copper does not, to form an oxide having dielectric properties when exposed to the air. The physical, electrical, and chemical characteristics of copper and aluminum have been fully discussed in numerous technical publications which are readily available to plaintiff.

[fol. 3852] Bare Conductor Wire

Bare conductor wire consists of hard drawn, medium hard drawn or annealed solid copper or aluminum conductor in a wide variety of sizes. Bare conductor wire is used to transmit or distribute electricity and as a neutral or grounding conductor. The characteristics of bare conductor wire are described in the following standards and specifications:

| | |
|---------------------------------------------------------|----------------|
| (a) Hard drawn copper wire | ASTM B 1-56 |
| (b) Medium hard drawn copper wire | ASTM B 2-52 |
| (c) Soft or annealed copper wire | ASTM B 3-56 |
| (d) Soft rectangular and square copper wire | ASTM B 48-58 |
| (e) Tinned soft or annealed copper wire | ASTM B 33-58 |
| (f) Tinned hard drawn and medium hard drawn copper wire | ASTM B 246-58 |
| (g) Hard drawn aluminum wire | ASTM B 230-58 |
| (h) Three-quarter hard aluminum wire | ASTM B 262-56 |
| (i) Half-hard aluminum wire | ASTM B 323-58T |
| (j) Rectangular and square bare aluminum | ASTM B 324-58T |

Bare Conductor Cable

Bare conductor cable consists of stranded copper or aluminum conductor supplied in a wide variety of types and sizes and tempers. It is used for the overhead transmission and distribution of electricity, for signal and telephone, and as a neutral and grounding conductor. The characteristics of bare conductor cable are described in the following standards and specifications:

[fol. 3853]

- | | |
|----------------------------------------------------------------------------|---------------|
| (a) Bunch stranded copper conductors | ASTM B 174-59 |
| (b) Concentric-lay stranded copper conductors | ASTM B 8-59 |
| (c) Rope-lay stranded copper conductors having bunch stranded members | ASTM B 172-58 |
| (d) Rope-lay stranded copper conductors having concentric stranded members | ASTM B 173-58 |
| (e) Concentric-lay stranded aluminum conductor | ASTM B 231-59 |

ACSR—Aluminum Cable Steel Reinforced

ACSR consists of a high tensile strength core of one or more wires, normally galvanized or aluminized steel, surrounded by a suitable number of hard drawn aluminum wires to give the desired electrical properties. The characteristics of ACSR are described in ASTM B 232-59T steel reinforced (ACSR) concentric-lay stranded aluminum conductors.

ACSR is used in overhead transmission and distribution of electricity, and is also covered with weather resistant materials for overhead lines.

Weatherproof Wire

Weatherproof wire is made from hard drawn, medium hard drawn, or annealed copper or hard drawn and medium hard drawn aluminum and has a weatherproof covering of either synthetic rubber, thermoplastic, or a fibrous covering (braid or knit). The characteristics of weatherproof wire are described in the following standards and specifications:

- | | |
|--------------------------------------|-----------------|
| (a) Fibrous covering (braid or knit) | ASA C 8.18-1948 |
| (b) Neoprene covering | ASA C 8.34-1954 |
| (c) Polyethylene covering | ASA C 8.35-1947 |

[fol. 3854] Weatherproof wire is used on insulators in the overhead distribution of electricity and as signal wire.

Service Drop Cable

Service drop cable consists of one, two, or three insulated copper or aluminum conductors twisted around an uninsulated conductor. The uninsulated conductor acts as a neutral wire and is selected to provide sufficient mechanical strength to support the cable under the anticipated service conditions. The characteristics of the types of service drop cable

generally used are described in the following standards and specifications:

- (a) Neoprene self-supporting service drop (multiplex)
- (b) Polyethylene self-supporting service drop (multiplex)

IPCEA S-19-81 (3rd ed.)

IPCEA S-19-81 (2nd ed.)

Service drop cable runs overhead from the utility to the weatherhead on a building.

Service Entrance Cable

Service entrance cable consists of one or more insulated copper or aluminum conductors surrounded by a number of uninsulated strands applied with a specific length of lay, and then enclosed by a moisture resisting tape and saturated braid covering. This cable may also be supplied with an outer extruded neoprene covering replacing the tape and braid. The characteristics of service entrance cable are described in the following standards and specifications:

Types SE unarmoured,
Style U

Underwriters' Laboratories
Standard 854 for service
cables

[fol. 3855] Service entrance cable is generally installed on the side of a house and runs from the weatherhead on the building to the meter or switchbox.

Building Wire

Building wire consists of a copper or aluminum conductor insulated with a suitable wall thickness of a vulcanized rubber compound or a thermoplastic compound (polyvinyl chloride). An outer covering of braid or thin neoprene compound or lead is used when rubber is employed as the insulator, while no outer covering is required when thermoplastic is used. More detailed constructions and characteristics of building wire are described in the following standards and specifications:

- (a) Thermoplastic insulated

Underwriters' Laboratories
Standard 83 or thermoplastic
insulated wires

- (b) Rubber insulated, braid covered

Underwriters' Laboratories
Standard 44 for rubber covered
wires and cables

- (c) Rubber insulated, lead covered
- (d) Nonmetallic sheathed cable
- (e) Nonmetallic sheathed and underground feeder cable

Underwriters' Laboratories
Standard 44 for rubber covered wires and cables
Underwriters' Laboratories
Standard 719 for nonmetallic sheathed and underground feeder cables
Underwriters' Laboratories
Standard 719 for nonmetallic sheathed and underground feeder cables

Building wire is used for general purpose wiring of branch and feeder circuits for residential, commercial, public, and industrial buildings.

[fol. 3856] Power Cable Under 601 Volts

Power cable under 601 volts consists of one or more solid or stranded, copper or aluminum conductors, with an appropriate thickness of a specified insulation. In multiple conductor designs, the conductors are twisted together with suitable fillers and binder, and an overall jacket. The characteristics of power cable under 601 volts are described in the following standards and specifications:

- | | |
|----------------------------------------------------------------------|-----------------------------|
| (a) Rubber insulated power cable | IPCEA S-19-81 (3rd Ed.) |
| (b) Thermoplastic insulated power cable | IPCEA S-61-402 (1st Ed.) |
| (c) Varnished cambric insulated power cable | IPCEA S-62-375 |
| (d) Paper insulated lead covered power cable | AEIC |
| (e) Interlocked armored cable (rubber or thermoplastic insulated) | IPCEA S-19-81 (3rd Ed.) |
| (f) Lead sheathed cable (rubber or thermoplastic insulated) | IPCEA S-19-81 (3rd Ed.) |
| (g) Self-supporting aerial cable (rubber or thermoplastic insulated) | IPCEA S-19-81 (3rd Ed.) |

Power cable under 601 volts is used for low voltage power feeders to and within structures and for low voltage power distribution systems, aerially, in conduit, in underground ducts, directly buried in earth, and on trays.

Power Cable 601 Volts and Higher

Power cable 601 volts and higher consists of one or more solid or stranded, copper or aluminum conductors, with an appropriate thickness of a specified insulation. A different

thickness of insulation is used for power cable 601 volts [fol. 3857] and higher than for power cable under 601 volts. In multiple conductor designs, as with power cable under 601 volts, the conductors are twisted together with suitable fillers and binder, and an overall jacket. The characteristics of power cable 601 volts and higher are described in the following standards and specifications:

| | |
|----------------------------------------------------------------------|-----------------------------|
| (a) Rubber insulated power cable | IPCEA S-19-81 (3rd Ed.) |
| (b) Thermoplastic insulated power cable | IPCEA S-61-402 (1st Ed.) |
| (c) Varnished cambric insulated power cable | IPCEA S-62-375 |
| (d) Paper insulated lead covered power cable | AEIC |
| (e) Interlocked armored cable (rubber or thermoplastic insulated) | IPCEA S-19-81 (3rd Ed.) |
| (f) Lead sheathed cable (rubber or thermoplastic insulated) | IPCEA S-19-81 (3rd Ed.) |
| (g) Self-supporting aerial cable (rubber or thermoplastic insulated) | IPCEA S-19-81 (3rd Ed.) |

Power cable 601 volts and higher is used for high voltage power feeders to and within structures and for high voltage power distribution systems, aerially, in conduit, in underground ducts, directly buried in earth, submarine and on trays.

Magnet Wire

Magnet wire consists of round, square or rectangular copper or aluminum wire. Four general classes of insulation are usually employed as coverings for magnet wire: film coatings, including oleo-resinous varnishes, enamels, vinyl acetal, epoxy, and nylon; paper coverings; cotton [fol. 3858] coverings; and glass coverings, including fiberglass and combinations of glass and dacron. The characteristics of magnet wire are described in the following standards and specifications:

| | |
|-----------------------------------------------------------------|-----------------------|
| (a) Cotton covered, square and rectangular | NEMA MW 12 (Proposed) |
| (b) Cotton covered, round | NEMA MW 11-1953 |
| (c) Paper covered, square and rectangular | NEMA MW 33-1957 |
| (d) Paper covered, round | NEMA MW 31-1956 |
| (e) Double paper, single cotton covered, square and rectangular | NEMA MW 32-1955 |

| | |
|-------------------------------------------------------------|-----------------------|
| (f) Glass covered, square and rectangular | NEMA MW 42-1957 |
| (g) Glass covered, silicone treated, square and rectangular | NEMA MW 43-1959 |
| (h) Glass covered, silicone treated, round | NEMA MW 44 (Proposed) |
| (i) Glass covered, round | NEMA MW 41-1959 |
| (j) Dacron-glass, square and rectangular | NEMA MW 46-1958 |
| (k) Dacron-glass, round | NEMA MW 45-1959 |
| (l) Heavy formvar, square and rectangular | NEMA MW 18-1955 |
| (m) Heavy epoxy, square and rectangular | NEMA MW 14 (Proposed) |

Magnet wire is used as an electrical winding material in coils for motors, generators, capacitors, transformers, solenoids, etc.

Communication Wire and Cable

Communication wire and cable consists of insulated copper or aluminum conductors. In multiple conductor construction [fol. 3859] the desired number of conductors are twisted together with an overall binder and a jacket applied. The characteristics of communication wire and cable are described in the following standards and specifications:

| | |
|-----------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------|
| (a) Polyethylene and PVC insulated multi-conductor instrumentation and interconnecting cables | ASTM D 1351-54T ASTM D 734-50T MIL-W-16878 MIL-W-76 REA P-E-14 |
| (b) Polyethylene insulated single and multi-paired telephone cable | |
| (c) Polyethylene and PVC insulated hook-up wire | U/L Appliance Wiring Materials Standards Western Electric Type 268-85 |
| (d) Paper telephone cable | |

Communication wire and cable is used in a variety of applications, including the following:

For instrumentation circuits, telemetering, circuit control testing, electronic computers, business machines, missiles and other similar applications; for interconnecting between electronic apparatus; for telegraph and telephone use generally including exchange areas, and plants, telephone switchboards, etc.; and for hook-up wire for radio, TV, and other electronic apparatus.

Control Wire and Cable

Control wire and cable consists of two or more solid or stranded, small, insulated copper or aluminum conductors. In multiple conductor designs, the desired number of conductors are twisted together with suitable fillers and binder, and an outer covering or jacket applied. The characteristics of control wire and cable are described in the following standards and specifications:

[fol. 3860]

- (a) PVC machine tool and control wire
- (b) Polyethylene insulated multi-conductor control cable
- (c) PVC insulated multi-conductor control cable
- (d) Rubber insulated multi-conductor control cable

National Machine Tool Builders Association
Interim standard #2 to IPCEA 8-61-402

IPCEA 8-19-81
(2nd Ed.)
IPCEA 8-19-81
(3rd Ed.)

Control wire and cable is used for operation and interconnection of protective devices, and for monitoring, data recording and conveyance of information, the latter including telemetering, pressure flow, indicating lights, etc. Control wire and cable is also used for wiring industrial equipment such as machine tools.

Signal Wire and Cable

Signal wire and cable consists of a rubber or thermoplastic insulated single or multiple copper or aluminum conductor cable intended for use overhead or underground in signal systems such as railway, traffic, fire alarm, or police alarm systems. The characteristics of signal wire and cable are described in the following standards and specifications:

- (a) Rubber insulated fire alarm and traffic signal cables
- (b) Polyethylene insulated fire alarm and traffic signal cables
- (c) PVC insulated fire alarm and traffic signal cables
- (d) Rubber insulated railroad signal wire
- (e) Rubber insulated railroad signal cable

IMSA #5

IMSA #19-1

IMSA #20

AAR #111

AAR #161, 240

[fol. 3861] Appliance Wire and Flexible Cord

Appliance wire consists of single or multiple concentric or bunched stranded copper or aluminum conductor wires designed for internal or accessory wirings of electrical appliances and equipment. It is insulated with rubber, thermoplastic compounds or fibrous materials of the type to which Underwriters' Laboratories appliance wiring materials labels may be applied. Typical characteristics of appliance wire are described in the following standards and specifications:

- | | |
|-----------------------------------------------------------|---------------------------------------------------------------------------|
| (a) PVC insulated appliance wire | U/L Appliance Wire Standard, ASTM D734-50T |
| (b) Types RF and RFH rubber insulated fixture wire | Underwriters' Laboratories standard 62 for flexible cord and fixture wire |
| (c) Types TF and TFF thermoplastic insulated fixture wire | Underwriters' Laboratories standard 62 for flexible cord and fixture wire |

Flexible cords cover a broad range of construction in which the conductor consists of five sizes of wire which are generally bunch stranded in order to give the desired degree of flexibility. In some cords, the conductors are laid parallel which gives an oval construction. Other types are made with two, three, or four conductors twisted with an outer jacket forming a finished round cord. These products employ two principle types of insulation and jackets—rubber insulation with rubber jackets, and thermoplastic insulation and jacket. Typical characteristics of flexible cords are described in the following standards and specifications:

- | | |
|--------------------------------------------------------|---------------------------------------------------------------------------|
| (a) Type SV rubber insulated vacuum-cleaner cord | Underwriters' Laboratories standard 62 for flexible cord and fixture wire |
| (b) Type SJO rubber insulated junior hard-service cord | Underwriters' Laboratories standard 62 for flexible cord and fixture wire |
| (c) Type SO rubber insulated hard-service cord | Underwriters' Laboratories standard 62 for flexible cord and fixture wire |

[fols. 3862-3863] Automotive and Aircraft Wire and Cable

Automotive and aircraft type wire and cable is used for ignition, starter, battery, or primary wiring systems in automotive vehicles and aircraft.

Marine Wire and Cable

Marine wire and cable includes copper wire and cable for use in the Merchant Marine service or for use on Navy vessels. It can consist of a wide variety of single or multiple conductors made in accordance either with MIL-C-915A for Navy use, or the recommended practice of American Institute of Electrical Engineers for electrical insulation on Merchant Marine vessels.

Portable Cord and Cable

Portable cord and cable consists of one or more insulated, stranded copper or aluminum conductors covered with an outer jacket of thermoplastic compound, neoprene, or synthetic rubber, or rubber, molded or unmolded. Portable cord generally has a conductor size 10 or smaller while portable cable is size 8 or larger. Portable cord and cable are used to supply electric power to mining machines, mining locomotives, portable power shovels, dredges, welding sets, concrete mixers, and electrical appliances.

[fol. 3864]

Table V

Introduction

This table sets forth Alcoa's total production and total sales of (A) EC aluminum pig, (B) EC aluminum ingot, and (C) EC aluminum rod and Rome's total production and total sales of (C) EC aluminum rod. Rome did not produce or sell any EC aluminum pig or ingot.

In addition, this table sets forth Rome's sales of EC aluminum rod to be used in the production of (1) aluminum conductor wire and cable and (3) other products. No rod produced by Rome was sold for use in the production of (2) aluminum conductor other than wire and cable. With respect to Alcoa the table shows sales of EC aluminum pig, ingot, and rod to be used in the production of (1) aluminum conductor wire and cable, (2) aluminum conductor other than wire and cable, and (3) other products. All figures shown are subject to errors inherent in attempting to ascertain the end use to which a product was put by defendants' customers.

It is impossible to show the production by either Alcoa or Rome of EC pig, ingot, or rod used in each category specified in (E), (F), and (G) since such products are not earmarked for any particular use at the time of production. EC pig, ingot, or rod produced during any period can be (a) sold as such product in a current or subsequent period, (b) placed in inventory, or (c) further fabricated during the current period. The sales figures set forth in this table provide some indication of the extent to which total production over a period of years is sold for the designated end uses. All of Rome's EC rod that is not sold is utilized by Rome in the fabrication of conductor wire and cable products. EC pig that is not sold by Alcoa is utilized to make EC ingot. As indicated by defendants' answer to [fol. 3865] Interrogatory 65 (d), EC ingot which is not sold as such would be utilized in producing EC redraw rod or busbar. As also indicated in defendants' answer to Interrogatory 65 (d), EC rod which is not sold as such would be used in the production of conductor or non-conductor wire and cable products.

(A) Alcoa

| | <u>Total Production.</u> | | <u>Total Sales</u> | | <u>Sales for Use in Production of Aluminum Conductor Wire or Cable</u> | | <u>Sales for Use in Production of Aluminum Conductor Other Than Wire or Cable</u> | | <u>Sales for Use in Production of Other Products</u> | |
|----------|--------------------------|------------------|--------------------|--------------|--------------------------------------------------------------------------------|--------------|-----------------------------------------------------------------------------------------------|--------------|--------------------------------------------------------------|--------------|
| | <u>Quantity</u> | <u>Value (1)</u> | <u>Quantity</u> | <u>Value</u> | <u>Quantity</u> | <u>Value</u> | <u>Quantity</u> | <u>Value</u> | <u>Quantity</u> | <u>Value</u> |
| 1954 | 111,767,536 | .204 | 2,763,426 | 562,342 | | | | | | |
| 1955 | 110,541,573 | .218 | 14,660,452 | 3,199,579 | 13,494,922 | 2,939,666 | 200,633 | 45,143 | 964,897 | 214,770 |
| 1956 | 119,006,544 | .239 | 18,660,306 | 4,485,658 | 17,878,493 | 4,303,557 | 606,840 | 139,586 | 174,973 | 42,518 |
| 1957 | 126,902,329 | .258 | 13,926,101 | 3,599,881 | 13,834,311 | 3,576,274 | | | 91,790 | 23,607 |
| 1958 | 85,252,670 | .250 | 16,492,268 | 4,123,336 | 16,426,232 | 4,107,093 | | | 66,036 | 16,243 |
| 1959 | 100,003,705 | .253 | 5,569,721 | 1,404,023 | 5,522,509 | 1,391,670 | | | 47,212 | 12,353 |
| 1960 | 85,300,334 | .266 | 17,482 | 4,656 | | | | | 17,482 | 4,656 |
| 1960 | | | | | | | | | | |
| 1st Qtr. | 26,333,088 | .265 | | | | | | | | |
| 2nd Qtr. | 22,818,381 | .266 | 17,482 | 4,656 | | | | | 17,482 | 4,656 |
| 3rd Qtr. | 18,353,933 | .266 | | | | | | | | |
| 4th Qtr. | 17,794,932 | .267 | | | | | | | | |

(B) Rome

Rome neither produced nor sold EC aluminum pig.

(1) The value shown is the average sales revenue for EC pig sold by Alcoa and is representative of the value of this product.

Table V

EC ALUMINUM INGOT

1274

(A) Alcoa

| | Total Production | | Total Sales | | Sales for Use in Production of Aluminum Conductor Wire or Cable | | Sales for Use in Production of Aluminum Conductor Other Than Wire or Cable | | Sales for Use in Production of Other Products | |
|----------|------------------|----------|-------------|--------|-----------------------------------------------------------------------|-------|-------------------------------------------------------------------------------------|--------|-----------------------------------------------------|-------|
| | Quantity | Value(1) | Quantity | Value | Quantity | Value | Quantity | Value | Quantity | Value |
| 1954 | 123,630,956 | .266 | 244 | 65 | | | | | | |
| 1955 | 107,495,476 | .273 | 71,207 | 18,826 | | | 40,452 | 10,922 | 30,755 | 7,904 |
| 1956 | 110,944,094 | .303 | 227 | 68 | | | | | 227 | 68 |
| 1957 | 116,569,890 | .306 | 70,915 | 21,709 | | | 70,915 | 21,709 | | |
| 1958 | 93,737,583 | .292 | 85,442 | 24,939 | | | 85,200 | 24,856 | 242 | 83 |
| 1959 | 109,570,231 | .295 | 161,954 | 47,633 | | | 161,661 | 47,535 | 293 | 98 |
| 1960 | 99,217,362 | .282 | 156,395 | 44,133 | | | 156,395 | 44,133 | | |
| 1960 | | | | | | | | | | |
| 1st Qtr. | 31,056,911 | .273 | 33,436 | 9,113 | | | 33,436 | 9,113 | | |
| 2nd Qtr. | 24,894,106 | .292 | 60,563 | 17,693 | | | 60,563 | 17,693 | | |
| 3rd Qtr. | 21,840,044 | .287 | (1,208) | (354) | | | (1,208) | (354) | | |
| 4th Qtr. | 21,426,301 | .278 | 63,604 | 17,681 | | | 63,604 | 17,681 | | |

(B) Rome

Rome neither produced nor sold EC aluminum ingot.

- (1) The value shown is the average sales revenue for EC ingot sold by Alcoa and approximates the value of this product. However, the value is not precisely accurate since the proportion of each size and shape of EC ingot comprising EC ingot sales is not exactly the same as the proportion of each size and shape of EC ingot comprising EC ingot production. This results from Alcoa's use of a substantial amount of this production for further fabrication in its own plants.

[fol. 3868]

EC ALUMINUM ROD

(A) Alcoa

| | Total Production | | Total Sales | | Sales for Use in Production of Aluminum Conductor Wire or Cable | | Sales for Use in Production of Aluminum Conductor Other Than Wire or Cable | | Sales for Use in Production of Other Products | |
|----------|------------------|-----------|-------------|-----------|-----------------------------------------------------------------------|-----------|-------------------------------------------------------------------------------------|--------|-----------------------------------------------------|---------|
| | Quantity | Value (1) | Quantity | Value | Quantity | Value | Quantity | Value | Quantity | Value |
| 1954 | 114,692,611 | .267 | 16,495,554 | 4,413,709 | (2) | (2) | (2) | (2) | (2) | (2) |
| 1955 | 101,563,685 | .279 | 15,193,862 | 4,262,894 | 14,937,055 | 4,182,270 | 35,494 | 12,480 | 221,313 | 68,144 |
| 1956 | 95,029,699 | .319 | 16,287,767 | 5,152,763 | 16,232,716 | 5,124,309 | 251 | 276 | 54,800 | 18,178 |
| 1957 | 91,103,694 | .330 | 12,042,712 | 4,074,986 | 12,027,994 | 4,069,516 | | | 14,718 | 5,470 |
| 1958 | 79,677,436 | .304 | 6,977,831 | 2,116,209 | 6,956,877 | 2,108,955 | | | 20,954 | 7,254 |
| 1959 | 102,151,389 | .289 | 16,832,689 | 4,855,351 | 16,458,677 | 4,745,706 | | | 374,012 | 109,645 |
| 1960 | 91,375,549 | .304 | 9,237,065 | 2,813,805 | 8,827,601 | 2,686,383 | | | 409,464 | 127,422 |
| 1960 | | | | | | | | | | |
| 1st Qtr. | 28,956,335 | .304 | 3,614,701 | 1,096,807 | 3,545,376 | 1,076,111 | | | 66,325 | 20,696 |
| 2nd Qtr. | 22,873,024 | .303 | 1,891,486 | 571,910 | 1,725,458 | 521,086 | | | 166,028 | 50,824 |
| 3rd Qtr. | 19,321,363 | .306 | 2,698,101 | 826,748 | 2,596,328 | 793,787 | | | 101,773 | 32,961 |
| 4th Qtr. | 20,224,827 | .307 | 1,035,777 | 318,340 | 960,439 | 295,399 | | | 75,338 | 22,941 |

(1) The value shown is calculated based on the average sales revenue for EC rod sold by Alcoa and is representative of the value of this product.

(2) Data not available for the year 1954.

[fols. 3869-3873]

EC ALUMINUM ROD (Cont'd)

(B) Rome

| Total Production | | Total Sales | | Sales for Use in Production of Aluminum Conductor Wire or Cable | | Sales for Use in Production of Aluminum Conductor Other Than Wire or Cable | | Sales for Use in Production of Other Products | |
|------------------|-----------|-------------|---------|-----------------------------------------------------------------------|--------|-------------------------------------------------------------------------------------|-------|-----------------------------------------------------|---------|
| Quantity | Value(1) | Quantity | Value | Quantity | Value | Quantity | Value | Quantity | Value |
| 1954 | 1,818,226 | 485,466 | | | | | | | |
| 1955 | 3,259,250 | 977,775 | 4,780 | 1,434 | 4,780 | 1,434 | | | |
| 1956 | 4,778,372 | 1,570,651 | 139,079 | 45,854 | 14,829 | 5,195 | | 124,250 | 40,659 |
| 1957 | 3,796,028 | 1,300,140 | 417,878 | 143,138 | 75,430 | 26,219 | | 342,448 | 116,919 |
| 1958 | 3,360,216 | 1,114,584 | 387,468 | 128,531 | 14,909 | 5,270 | | 372,559 | 123,261 |
| 1959 | 4,287,705 | 1,377,640 | 494,193 | 158,780 | 59,863 | 19,920 | | 434,330 | 138,860 |
| 1960 | | | | | | | | | |
| 1st Qtr. | 1,126,758 | 358,478 | 122,536 | 38,985 | - | - | | 122,536 | 38,985 |
| 2nd Qtr. | - | - | - | - | - | - | | - | - |
| 3rd Qtr. | - | - | - | - | - | - | | - | - |
| 4th Qtr. | - | - | - | - | - | - | | - | - |

Rome sold no EC
aluminum rod for
this purpose.

(1) Value shown is derived for 1954 by multiplying production by annual average market price, because Rome sold no rods for these years, and for other years by multiplying production by annual average sales price. Rome suspended production of rod April 1, 1960.

ALCOA

TABLE VII

[fol. 3874]

| Period | Bare Conductor Cable | | A.C.S.R. | | Weatherproof Wire and Cable | | Service Drop | |
|---------------|----------------------|-----------|------------|------------|--------------------------------|-----------|--------------|-----------|
| | Aluminum | | | | Aluminum | | Aluminum | |
| | Quantity | Value | Quantity | Value | Quantity | Value | Quantity | Value |
| | # | \$ | # | \$ | # | \$ | # | \$ |
| 1950 | 1,300,845 | 371,455 | 63,716,799 | 23,132,917 | - | - | - | - |
| 1952 | 5,567,477 | 1,789,030 | 76,122,240 | 30,125,297 | 283,241 | 236,890 | 76,620 | 85,053 |
| 1954 | 3,785,576 | 1,232,024 | 67,018,508 | 27,148,186 | 1,199,537 | 912,427 | 1,070,362 | 973,691 |
| 1955 | 5,493,545 | 1,846,328 | 55,162,255 | 22,463,329 | 1,904,160 | 1,528,721 | 2,101,374 | 1,943,985 |
| 1956 | 10,522,368 | 4,076,395 | 43,845,049 | 20,777,882 | 2,309,637 | 1,941,470 | 2,431,825 | 2,304,508 |
| 1957 | 7,723,724 | 2,988,308 | 45,124,217 | 21,038,105 | 2,176,276 | 1,725,238 | 2,519,403 | 2,287,165 |
| 1958 | 9,520,905 | 3,275,391 | 46,338,641 | 20,025,090 | 2,035,466 | 1,368,195 | 3,714,860 | 2,841,402 |
| 1959 | 9,210,930 | 3,093,038 | 49,245,338 | 20,140,681 | 2,303,079 | 1,447,283 | 5,114,203 | 3,410,001 |
| 1960 | 8,710,849 | 3,272,972 | 43,541,637 | 19,377,457 | 1,895,347 | 1,263,663 | 3,845,713 | 2,632,232 |
| 1959-1st Qtr. | 1,749,385 | 614,227 | 11,672,340 | 4,742,495 | 484,090 | 299,545 | 856,123 | 580,287 |
| -2nd Qtr. | 2,417,910 | 795,993 | 12,576,986 | 5,106,936 | 561,371 | 367,756 | 1,003,139 | 706,803 |
| -3rd Qtr. | 3,301,126 | 1,069,281 | 14,145,605 | 5,674,103 | 646,636 | 386,908 | 1,552,375 | 998,897 |
| -4th Qtr. | 1,742,509 | 613,537 | 10,850,407 | 4,617,147 | 610,982 | 393,074 | 1,702,566 | 1,124,014 |
| 1960-1st Qtr. | 2,219,056 | 819,422 | 10,122,301 | 4,473,444 | 423,113 | 268,414 | 883,348 | 574,546 |
| -2nd Qtr. | 2,505,265 | 884,894 | 13,865,053 | 6,066,862 | 479,956 | 316,776 | 1,054,863 | 690,236 |
| 3rd Qtr. | 1,651,318 | 632,624 | 11,807,257 | 5,273,108 | 584,001 | 383,469 | 1,162,520 | 761,408 |
| -4th Qtr. | 2,436,210 | 936,032 | 7,747,026 | 3,564,043 | 408,277 | 295,004 | 744,982 | 586,042 |

[fol. 3875]

ROME

| | Bare Conductor Cable (1) | | | | A.C.S.R. | |
|------------------|--------------------------|------------|-----------|-----------|-----------|-----------|
| | Copper (2) | | Aluminum | | Quantity | Value |
| | Quantity | Value | Quantity | Value | | |
| 1950 | N.A. | \$ 996,579 | - | - | - | - |
| 1952 | N.A. | 964,698 | - | - | - | - |
| 1954 | N.A. | 1,203,240 | 32,517# | \$ 11,900 | 291,792# | \$ 82,247 |
| 1955 | N.A. | 1,744,249 | 70,838 | 25,544 | 242,142 | 73,653 |
| 1956 | N.A. | 1,443,232 | 176,138 | 71,982 | 555,304 | 186,427 |
| 1957 | N.A. | 1,017,606 | 106,041 | 42,985 | 551,888 | 181,723 |
| 1958 | N.A. | 824,489 | 70,036 | 32,529 | 665,384 | 207,715 |
| 1959 | N.A. | 1,194,222 | 184,445 | 66,259 | 1,645,292 | 470,841 |
| 1960 | N.A. | 1,105,545 | 11,210 | 4,696 | 355,011 | 107,482 |
| 1st Quarter 1959 | N.A. | 301,201 | 73,751 | 25,581 | 151,272 | 45,787 |
| 2nd " " | N.A. | 328,496 | 10,902 | 3,776 | 416,432 | 121,894 |
| 3rd " " | N.A. | 300,615 | 30,152 | 10,728 | 544,523 | 151,767 |
| 4th " " | N.A. | 263,910 | 69,640 | 26,172 | 533,065 | 151,393 |
| 1st Quarter 1960 | N.A. | 261,089 | 21,742 | 9,239 | 183,245 | 56,386 |
| 2nd " " | N.A. | 310,238 | 116 | 121 | 143,670 | 43,571 |
| 3rd " " | N.A. | 306,344 | - | - | 28,096 | 7,525 |
| 4th " " | N.A. | 227,874 | (10,648) | (4,664) | - | - |

(1) Includes only sales to utilities and distributors; sales to fabricators are excluded.

(2) Includes bare conductor wire sold by Rome to utilities and distributors.

[fol. 3876]

ROME

| | Weatherproof Wire and Cable | | | | Service Drop Cable | | | |
|------------------|-------------------------------|------------------------|----------------------------|--------------------|--------------------|---------|----------------|-----------|
| | Copper | | Aluminum | | Copper | | Aluminum | |
| | Quantity | Value | Quantity | Value | Quantity | Value | Quantity | Value |
| 1950 | 11,777,119# 42,579,983 Ft. | 3,621,476 1,012,640 | - | - | 6,252,465 Ft. | 745,755 | - | - |
| 1952 | 6,919,081# 26,727,426 Ft. | 2,543,600 781,089 | 102,143# 2,468,256 Ft. | 40,588 148,387 | 2,360,953 Ft. | 360,759 | 4,366,035 Ft. | 497,512 |
| 1954 | 5,925,108# 19,139,896 Ft. | 2,411,756 767,871 | 373,156# 4,731,179 Ft. | 154,588 254,913 | 2,180,069 Ft. | 432,435 | 10,911,521 Ft. | 1,212,341 |
| 1955 | 7,577,313# 20,364,006 Ft. | 3,556,701 799,219 | 378,597# 7,618,779 Ft. | 167,044 619,085 | 2,824,189 Ft. | 536,859 | 12,952,032 Ft. | 1,416,275 |
| 1956 | 5,484,907# 18,281,035 Ft. | 2,538,847 859,512 | 273,998# 12,675,757 Ft. | 129,264 901,958 | 2,453,176 Ft. | 551,331 | 17,649,182 Ft. | 2,084,897 |
| 1957 | 4,422,992# 15,583,106 Ft. | 1,955,022 618,637 | 109,190# 6,873,758 Ft. | 45,843 532,657 | 1,797,880 Ft. | 357,994 | 12,309,835 Ft. | 1,491,649 |
| 1958 | 3,118,079# 13,818,840 Ft. | 1,240,150 499,250 | 212,954# 6,517,658 Ft. | 55,185 426,620 | 1,508,458 Ft. | 277,704 | 11,723,728 Ft. | 1,250,364 |
| 1959 | 3,172,172# 12,457,361 Ft. | 1,410,738 491,509 | 11,267# 5,519,586 Ft. | 5,128 326,709 | 1,564,286 Ft. | 315,798 | 13,399,820 Ft. | 1,327,061 |
| 1960 | 2,948,456# 9,456,594 Ft. | 1,336,592 388,836 | 4,772,415 Ft. | 244,646 | 1,506,161 Ft. | 255,268 | 13,349,711 Ft. | 1,312,125 |
| 1st Quarter 1959 | 660,729# 3,154,029 Ft. | 286,278 112,168 | 1,452,075 Ft. | 92,390 | 415,465 Ft. | 79,979 | 2,433,444 Ft. | 238,972 |
| 2nd " " | 762,988# 2,958,112 Ft. | 342,076 115,355 | 260# 1,184,851 Ft. | 35 75,982 | 332,075 Ft. | 62,008 | 2,316,108 Ft. | 233,310 |
| 3rd " " | 833,347# 3,587,009 Ft. | 370,328 164,786 | 5,848# 1,346,627 Ft. | 2,706 74,506 | 404,195 Ft. | 79,536 | 4,100,581 Ft. | 392,426 |
| 4th " " | 915,108# 2,758,211 Ft. | 412,056 99,200 | 5,159# 1,536,033 Ft. | 2,387 83,831 | 412,551 Ft. | 94,275 | 4,549,687 Ft. | 462,351 |
| 1st Quarter 1960 | 641,155# 2,196,526 Ft. | 293,990 99,385 | 2,199,964 Ft. | 93,681 | 283,778 Ft. | 49,136 | 2,808,782 Ft. | 265,023 |
| 2nd " " | 958,521# 4,749,105 Ft. | 432,942 116,943 | 986,535 Ft. | 66,085 | 287,201 Ft. | 51,128 | 3,441,569 Ft. | 340,770 |
| 3rd " " | 738,501# 2,253,107 Ft. | 337,346 90,810 | 640,508 Ft. | 35,726 | 488,609 Ft. | 83,479 | 2,471,972 Ft. | 227,772 |
| 4th " " | 610,279# 2,257,856 Ft. | 272,314 81,698 | 945,408 Ft. | 49,154 | 446,582 Ft. | 71,525 | 4,627,388 Ft. | 478,560 |

[fol. 3877]

RCA

Power Cable Product Types (Under 601V)

| | Street Lighting Cable | | Tree Wire | | | | Preassembled Aerial Cable | | | | Twinline | |
|------------------|-----------------------|---------|-----------|--------|------------|--------|---------------------------|--------|-----------|--------|-----------|-------|
| | Copper | | Copper | | Aluminum | | Copper | | Aluminum | | Aluminum | |
| | Quantity | Value | Quantity | Value | Quantity | Value | Quantity | Value | Quantity | Value | Quantity | Value |
| 1950 | 454,567 Ft. | 44,056 | - | - | - | - | - | - | - | - | - | - |
| 1952 | 635,421 | 84,275 | - | - | - | - | - | - | - | - | - | - |
| 1954 | 428,976 | 89,093 | - | - | - | - | 67,570 Ft. | 58,940 | - | - | - | - |
| 1955 | 990,454 | 97,462 | - | - | - | - | 24,790 | 7,100 | - | - | - | - |
| 1956 | 1,240,540 | 122,792 | 9,625 Ft. | 728 | 56,095 Ft. | 13,879 | 22,410 | 17,072 | 2,790 Ft. | 7,742 | - | - |
| 1957 | 1,094,695 | 98,144 | 4,260 Ft. | 943 | - | - | 19,700 | 18,730 | 350 | 343 | - | - |
| 1958 | 1,025,310 | 83,935 | - | - | - | - | 24,975 | 25,495 | 79,044 | 30,887 | - | - |
| 1959 | 766,865 | 66,277 | 24,105 | 3,229 | - | - | 54,770 | 52,981 | 116,920 | 54,368 | 5,960 Ft. | 5,376 |
| 1960 | 583,383 | 54,548 | 85,550 | 10,762 | - | - | 14,462 | 26,415 | 5,090 | 7,015 | - | - |
| 1st Quarter 1959 | 206,025 | 19,197 | 3,950 | 931 | - | - | 8,685 | 6,052 | 116,520 | 54,368 | 4,960 | 4,474 |
| 2nd | 196,790 | 16,325 | - | - | - | - | 18,830 | 12,200 | - | - | 1,000 | 902 |
| 3rd | 197,425 | 16,104 | 20,155 | 2,298 | - | - | 17,170 | 18,633 | - | - | - | - |
| 4th | 166,625 | 14,651 | - | - | - | - | 10,085 | 16,096 | - | - | - | - |
| 1st Quarter 1960 | 145,825 | 13,973 | 79,520 | 9,542 | - | - | 2,445 | 4,067 | - | - | - | - |
| 2nd | 218,348 | 20,531 | - | - | - | - | 5,137 | 9,850 | 2,690 | 3,751 | - | - |
| 3rd | 97,570 | 10,198 | 3,100 | 502 | - | - | 5,080 | 9,173 | 2,400 | 3,264 | - | - |
| 4th | 121,640 | 9,846 | 2,930 | 718 | - | - | 1,800 | 3,325 | - | - | - | - |

[fol. 3878]

ROME

Power Cable Product Types (Over 601V)

| | Street Lighting Cable | | | | Tree Wire | | | |
|------------------|-----------------------|--------|----------|--------|-------------|--------|-------------|--------|
| | Copper | | Aluminum | | Copper | | Aluminum | |
| | Quantity | Value | Quantity | Value | Quantity | Value | Quantity | Value |
| 1950 | 23,505 Ft. | 1,700 | - | - | - | - | - | - |
| 1952 | 183,558 Ft. | 10,517 | 300,240 | 14,233 | - | - | - | - |
| 1954 | 1,089,105 Ft. | 67,192 | - | - | - | - | - | - |
| 1955 | 192,595 Ft. | 42,334 | - | - | 19,435 Ft. | 1,015 | 73,725 Ft. | 16,651 |
| 1956 | 492,920 Ft. | 49,464 | - | - | 31,560 Ft. | 4,763 | 30,545 Ft. | 5,599 |
| 1957 | 324,738 Ft. | 27,013 | - | - | 105,526 Ft. | 19,429 | 235,875 Ft. | 48,443 |
| 1958 | 29,300 Ft. | 3,047 | 15,135 | 1,453 | 120,800 Ft. | 21,557 | 18,958 Ft. | 4,656 |
| 1959 | 94,565 Ft. | 8,798 | - | - | 139,310 Ft. | 24,704 | 118,196 Ft. | 17,980 |
| 1960 | 34,165 Ft. | 3,753 | - | - | 212,680 Ft. | 46,785 | 60,530 Ft. | 10,550 |
| 1st Quarter 1959 | 3,990 Ft. | 706 | - | - | 34,530 Ft. | 4,689 | 9,080 Ft. | 1,471 |
| 2nd " " | 11,350 Ft. | 1,117 | - | - | 10,560 Ft. | 16,010 | 6,650 Ft. | 1,452 |
| 3rd " " | 63,725 Ft. | 4,863 | - | - | 28,220 Ft. | 4,005 | 50,450 Ft. | 5,458 |
| 4th " " | 15,500 Ft. | 2,112 | - | - | - | - | 52,016 Ft. | 9,599 |
| 1st Quarter 1960 | 22,885 Ft. | 2,313 | - | - | 1,100 Ft. | 284 | 12,050 Ft. | 1,765 |
| 2nd " " | 1,350 Ft. | 281 | - | - | 16,235 Ft. | 3,501 | 7,155 Ft. | 1,612 |
| 3rd " " | 3,790 Ft. | 567 | - | - | 158,335 Ft. | 38,207 | 27,105 Ft. | 4,903 |
| 4th " " | 6,140 Ft. | 592 | - | - | 37,010 Ft. | 4,793 | 14,220 Ft. | 2,270 |

ROME

[fols. 3879-3880]

| | Power Cable Product Types (Over 601V) | | | | | | | |
|------------------|---------------------------------------|---------|-----------|--------|------------|--------|----------|---------|
| | Preassembled Aerial Cable | | | | Trimline | | | |
| | Copper | | Aluminum | | Copper | | Aluminum | |
| | Quantity | Value | Quantity | Value | Quantity | Value | Quantity | Value |
| 1950 | - | - | - | - | - | - | - | - |
| 1952 | - | - | - | - | - | - | - | - |
| 1954 | 8,870 Ft. | 15,468 | - | - | - | - | - | - |
| 1955 | 24,599 | 46,912 | - | - | - | - | - | - |
| 1956 | 147,980 | 240,934 | - | - | - | - | - | - |
| 1957 | 222,448 | 391,203 | - | - | - | - | - | - |
| 1958 | 112,237 | 192,897 | - | - | - | - | 4,060 | 4,503 |
| 1959 | 40,449 | 60,185 | 4,475 Ft. | 12,670 | 12,860 Ft. | 12,390 | 179,329 | 153,220 |
| 1960 | 26,380 | 74,663 | 23,700 | 17,577 | 3,350 | 3,148 | 150,845 | 124,086 |
| 1st Quarter 1959 | 9,945 | 28,493 | - | - | - | - | 29,304 | 27,998 |
| 2nd " " | 5,671 | 1,974 | - | - | 2,660 | 3,570 | 13,845 | 38,690 |
| 3rd " " | 9,805 | 11,281 | - | - | 6,650 | 6,363 | 59,194 | 49,067 |
| 4th " " | 15,028 | 18,437 | 4,475 | 12,670 | 3,550 | 2,457 | 46,986 | 37,465 |
| 1st Quarter 1960 | 9,965 | 24,886 | - | - | - | - | 61,131 | 59,422 |
| 2nd " " | 3,455 | 10,629 | - | - | 500 | 163 | 41,935 | 32,522 |
| 3rd " " | - | - | 23,700 | 17,577 | - | - | 31,883 | 22,673 |
| 4th " " | 12,960 | 39,148 | - | - | 2,850 | 2,985 | 15,896 | 9,469 |

[fol. 4437] IN THE UNITED STATES DISTRICT
COURT, NORTHERN DISTRICT OF NEW YORK

Civil No. 8030

UNITED STATES OF AMERICA, Plaintiff,
against

ALUMINUM COMPANY OF AMERICA AND ROME CABLE
CORPORATION, Defendants.

The Findings of Fact and Conclusions of Law, set out below, together with the opinion, filed herewith, will constitute the decision in this case.

FINDINGS OF FACT—Filed January 28, 1963

1. The defendants, Aluminum Company of America and Rome Cable Corporation, hereinafter referred to as Alcoa and Rome, maintain offices, transact business and are found within the Northern District of New York.

2. The defendant Alcoa is a corporation organized and existing under the laws of the State of Pennsylvania, with its principal office in Pittsburgh, Pennsylvania.

3. Alcoa is an integrated aluminum producer engaged in the manufacture and sale of primary aluminum, intermediate aluminum products, and various end products. It manufactures these products in several states and sells and ships such products throughout the United States in interstate commerce.

4. The defendant Rome is a wholly owned subsidiary of Alcoa, organized and existing under the laws of the State of Delaware, with its principal office at Rome, New York. It was organized by Alcoa for the purpose of holding the assets of its predecessor, also called Rome Cable Corporation, a New York corporation.

5. Rome manufactures, among other products, copper rod, electrical wire and cable, conduit and cable trough and cable installation devices. It manufactures these products in several states and sells and ships them in interstate commerce to its customers located in many states of the United States.

6. On March 31, 1959, defendant Alcoa acquired by stock [fol. 4438] transfer all of the assets of Rome-New York. Title to such assets was taken by the defendant Rome (Delaware) which also assumed Rome-New York's liabilities.

7. Alcoa's purpose in acquiring Rome was to acquire the ability to manufacture the more complicated insulated wire and cable products and diversify its operations. Rome's manufacture of aluminum products did not induce said acquisition.

8. In its search for a suitable company, Alcoa in 1958 retained the services of Ebasco Services, Inc. Ebasco was advised that Alcoa's purpose was to secure know-how in the insulating field.

9. While Alcoa considered other insulating companies, Rome was its first choice. This preference arose principally from the fact that Rome's personnel and organization were well and favorably known to Alcoa through their mutual association in a "tolling arrangement" entered into in 1952.

10. In the course of negotiations with Rome, Alcoa made it clear that, if acquired, Rome would operate as a separate division with a high degree of autonomy and increased responsibility with regard to the sale of wire, cable and conduit products.

11. The evidence does not establish that Alcoa's acquisition of Rome was part of a continuing program contemplating future expansion through mergers or acquisitions in wire and cable, conduit, or any related field.

12. Alcoa mines and processes bauxite, refines bauxite into alumina, and smelts alumina into aluminum. The aluminum, so produced, is sold either in alloyed or unalloyed form, as ingot, or is used by Alcoa in its own fabrication of a wide variety of semi-finished and finished products. Among the products fabricated by Alcoa are sheet and plate, extrusions, castings, forgings, wire, rod and bar, electrical conductors and accessories, conduit, foil, tubing, rivets and screw machine products, closures, and powder and paste.

13. Prior to the acquisition of Rome, Alcoa's participation in the electrical wire and cable field was limited to the manufacture and sale of bare all-aluminum cable, bare

[fol. 4439] aluminum conductor steel reinforced (ACSR), and polyethylene covered line wire and multiplex cable. It also sold neoprene covered line wire and multiplex cable manufactured for it by Rome. Alcoa made no electrical wire and cable products using copper as the conductor; nor did it make any of the more complicated insulated constructions, such as, among others, building wire, power cable, control cable, and magnet wire.

14. Bare wire and cable products constituted the great preponderance of Alcoa's sales in the electrical wire and cable field. In 1958, out of Alcoa's total conductor wire and cable shipments of 62.9 million pounds, ACSR and bare aluminum cable amounted to 56.9 million pounds, or more than 90 percent of the total.

15. While Alcoa continues to be the leading United States producer of primary aluminum and fabricated aluminum products, its position has declined markedly in recent years. (Opinion page 11).

16. Prior to the acquisition, Rome was primarily a manufacturer of electrical wire and cable. It had three manufacturing plants located at Rome, New York; Torrance, California; and Collegeville, Pennsylvania. It produced and sold bare wire and cable and a diversified line of insulated wire and cable products; it manufactured copper and aluminum rod for use in its own operations and for sale to other manufacturers; and it produced copper rod and certain wire and cable products on a toll basis using materials supplied by others. In addition, at its plant in Torrance, California, Rome manufactured steel rigid conduit and electrical metallic tubing (commonly referred to as EMT) and mechanical steel tubing. At its Cope Division plant in Collegeville, Pennsylvania, it manufactured a line of cable supporting systems, including cable trough and trays. In calendar year 1958, Rome's sales (exclusive of toll conversion) in its major product categories were approximately as follows: Wire and cable, \$23.4 million; rod, 4 million (includes aluminum rod sales of \$128 thousand); [fol. 4440] conduit (rigid and EMT) \$6.5 million; and, Cope products, \$1.3 million.

17. Rome's primary emphasis in the wire and cable field was on the manufacture of insulated wire and cable products. It was a skilled manufacturer of the more compli-

ated insulated products, and had in this area technical ability that Alcoa lacked.

18. Copper was by far the predominant metal used by Rome in its wire and cable operations. Its importance is shown by the fact that in the five years prior to the acquisition copper represented more than 90 percent of Rome's combined copper and aluminum purchases, and copper products accounted for more than 90 percent of its wire and cable sales revenue.

19. On March 7, 1952, Alcoa and Rome entered into a continuing agreement, referred to as a "tolling agreement", whereby Rome would cover bare aluminum wire furnished by Alcoa for the account of Alcoa. The agreement provided that Rome would cover or insulate bare aluminum wire with neoprene or polyethelene insulating materials. The arrangement permitted Alcoa to take advantage of the superior "know-how" of Rome in the matter of covering of bare wire products some of which were sold in competition with Rome.

20. Prior to the acquisition only five products were manufactured and sold by both Alcoa and Rome. These products can be identified as follows: (a) Aluminum Conductor Steel Reinforced (ACSR) and Aluminum Cable, Bare; (b) Covered Line Wire (also referred to as Weather-proof). This product consists of a copper or aluminum conductor covered with a synthetic rubber (neoprene), thermo-plastic (Polyethylene), or fibrous covering; (c) Multiplex Cable; (d) Conduit; (e) Aluminum Redraw Rod. Aluminum redraw rod is an intermediate aluminum product used in the fabrication of aluminum wire.

21. Prior to the acquisition, defendants manufactured and sold the overlap products referred to in Finding 20 as follows:

[fol. 4441] (a) ACSR and Aluminum Cable, Bare. Alcoa made ACSR and aluminum cable, bare, in a full range of sizes; Rome made only a limited range of sizes. Alcoa's total sales amounted to approximately \$23,000,000 in 1958, of which approximately \$8,000,000 represented sales in the size range Rome was able to make. Rome's sales in 1958 amounted to approximately \$240,000.

(b) Covered Line Wire and Multiplex Cable. Alcoa did not sell these products until 1952 when it entered into a tolling arrangement with Rome under which Rome manufactured polyethylene and neoprene covered aluminum line wire and multiplex cable which Alcoa sold for its own account. In 1956, Alcoa started to produce its own polyethylene covered line wire and multiplex cable, and at the time of the acquisition it had under consideration a plan to install neoprene covering facilities. Rome produced covered line wire using copper or aluminum conductors and having either neoprene, polyethylene or fibrous covering. It also produced multiplex cable using copper and aluminum insulated conductors. Alcoa's covered line wire and multiplex sales in 1958 amounted to approximately \$4,200,000; Rome's sales in that year, including both copper and aluminum, were approximately \$3,700,000.

(c) Conduit. Prior to the acquisition, Rome manufactured steel conduit, both rigid and EMT; it made no aluminum conduit. Alcoa manufactured rigid aluminum conduit and aluminum EMT; it made no steel conduit. Alcoa's sales of aluminum conduit in 1958 amounted to approximately \$525,000; Rome's sales of steel conduit amounted to about \$6,500,000.

(d) Aluminum Redraw Rod. Prior to the acquisition Alcoa produced aluminum redraw rod on its rolling mills and Rome produced such rod by the Properzi method. Alcoa made sales of aluminum rod to other manufacturers of approximately \$2,500,000 in 1958. Most of Rome's aluminum rod was consumed in its own operations, its sales to other manufacturers in 1958 amounting to only about \$128,000.

22. Alcoa's net sales and operating revenues in 1958 amounted to approximately \$753,000,000. Its sales in the overlap area, consisting of ACSR and aluminum cable, bare (sizes 336,400 cir. mils. and smaller), covered line wire and multiplex cable, conduit and aluminum rod, totalled approximately \$15,300,000, or about 2 percent of its net sales and operating revenues. The ratio between Alcoa's

overlap and total sales for earlier years is approximately the same.

[fol. 4442]

Lines of Commerce

Explanation

Items 1-10, set forth on pages 13 and 14 of the filed opinion, detail the lines of commerce urged by the plaintiff as properly established in this action. Reference to same is made here without the repetition thereof. The Findings below are intended to supplement those made in the discussion of the various items as same appears in pages 14 to 19 of said opinion.

Aluminum Conductor Lines

23. Item 1, aluminum conductor wire and cable, is a composite of Items 2 and 3 and is not a separate and distinct line of commerce here. (See Opinion, page 15).

24. Item 2, bare aluminum cable and ACSR (aluminum covered steel reinforced) have virtually displaced bare copper cable for use in overhead transmission lines. They are generally recognized as a separate product classification and the manufacture and sale of these products require special stranding equipment and designing skill. The parties have agreed that the manufacture and sale of bare aluminum cable and ACSR may be treated as a separate line of commerce for the purpose of this case and it is so found.

25. Item 3, insulated or covered aluminum wire and cable. The wire and cable industry defines insulated wire and cable products according to function or type, not according to the metal used as conductor.

26. Manufacturers of insulated wire and cable products regard themselves as insulators of wire and cable products, not as insulators of copper wire and cable on the one hand, or of aluminum wire and cable on the other.

27. The evidence establishes that wire and cable fabricators can draw, strand and insulate copper and aluminum interchangeably on the same equipment and with the same personnel. The only change required is the use of a different lubricant in the drawing operation and a cleanup of [fol. 4443] the drawing machine when it is to be used on a different metal.

28. Since copper and aluminum products are completely interchangeable from a performance standpoint, utility companies choose between copper and aluminum insulated or covered overhead products solely on the basis of economics. The decision requires evaluation of numerous economic factors in addition to the cost of the wire or cable itself.

29. While aluminum is used in various insulated wire and cable products, most such products, accounting for more than \$1,250,000,000 out of total 1958 insulated wire and cable shipments of \$1,320,000,000, are predominantly made from copper. Aluminum has gained its greatest acceptance in the insulated or covered field in products used in the overhead distribution of electric power, principally, covered line wire (weatherproof) and multiplex cable. Even with respect to these products, however, substantial quantities are sold using copper as the conductor.

30. Item 4. Aluminum ingot and rod used in the production of aluminum conductor wire and cable is a separate line of commerce. (See Opinion page 16).

Conductor Wire and Cable Lines

31. Item 5, Conductor wire and cable (aluminum and copper) as a line of commerce corresponds to the electrical wire and cable industry. It includes the manufacture and sale of all bare and insulated or covered electrical wire and cable products, whether made from copper or aluminum. There is a generally recognized electrical wire and cable industry and the parties agree that conductor wire and cable may be treated as a line of commerce for the purpose of this case.

32. Item 6, Conductor wire and cable, bare, (aluminum and copper) which consists of ACSR and aluminum cable, bare; bare conductor aluminum wire; and bare conductor copper wire and cable, is not a separate line of commerce here. (Opinion page 17).

[fol. 4444] 33. Item 7, Wire and cable, insulated or covered (aluminum and copper) line of commerce consists of the manufacture and sale of all insulated or covered wire and cable products, both copper and aluminum and it is

agreed that same constitutes a separate line of commerce here.

34. By item 8, Service drop cable (aluminum and copper), plaintiff refers exclusively to multiplex cable, both copper and aluminum. The evidence fails to establish that the manufacture and sale of multiplex cable is a line of commerce separate and distinct from the manufacture and sale of other insulated or covered wire and cable products.

35. Multiplex cable is only one of many products of the insulated wire and cable industry. It is one of the simplest of such products, being nothing more than one or more simple insulated conductors twisted together with a bare cable. It requires no unique production facilities.

36. Virtually any manufacturer of insulated wire and cable products is capable of making multiplex cable. A company equipped to manufacture building wire, power cable, control cable, or practically any other insulated wire and cable product can use its existing machinery and personnel to manufacture multiplex cable. Such companies constantly review their product lines, and switch from one product to another whenever it is profitable to do so.

37. Multiplex cable is not used exclusively as a service drop from the utility pole to the building, nor is it the only product used for that function.

(a) Weatherproof line wire in the form of two or three separate wires is extensively used for service drop purposes.

(b) Other cable, including Type K and Type SD cable, are used for service drop purposes.

(c) In addition to being used for service drop purposes, multiplex cable is also used as a self-supporting secondary line. The IPCEA-NEMA Standards Publications covering multiplex cable define the product as "neutral-supported secondary and service drop cables."

[fol. 4445] 38. Item 9, Conduit (aluminum and steel). The parties are agreed that the manufacture and sale of conduit, both aluminum and steel, may be treated as a line of commerce for the purpose of this case.

39. The evidence does not establish that the manufac-

ture and sale of aluminum conduit is a separate line of commerce.

40. Steel conduit and aluminum conduit are functionally interchangeable. Both are used to enclose and protect electrical wires and cables against external mechanical and chemical abuse. The evidence establishes that steel and aluminum conduit are in direct and substantial competition with each other.

41. The pricing of steel and aluminum conduit is directly related. Changes in the price of steel conduit cause corresponding changes in the price of aluminum conduit, and vice versa.

42. Aluminum conduit manufacturers meet strong and vigorous competition from the manufacturers of steel conduit, and vice versa.

The Geographic Market

43. The parties agree that the United States as a whole is a proper geographic market or "section of the country" within which the impact of the acquisition may be measured as to all of the lines of commerce, whether or not allowed herein.

44. It has not been established that the eleven western states (Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming) constitute an appropriate geographic market or "section of the country" with respect to either the conduit or the alleged aluminum conduit lines of commerce.

Competitive Effect in the Claimed Lines of Commerce

45(a) Statistics showing Alcoa and Rome market shares in the aluminum conductor lines of commerce, both before and since the acquisition, are set forth in the following tables.

[fol. 4446]

ACSR and Aluminum Cable, Bare

| Year | Alcoa % | Rome % |
|-----------|------------|-----------|
| 1954..... | 48.4 | 0.2 |
| 1955..... | 43.2 | 0.1 |
| 1956..... | 29.8 | 0.3 |
| 1957..... | 32.3 | 0.3 |
| 1958..... | 32.5 | 0.3 |
| 1959..... | 31.4 | 0.7 |
| 1960..... | 30.6 | 0.1 |
| 1961..... | 26.1 | |

Aluminum Wire and Cable, Insulated or Covered

| Year | Alcoa % | Rome % |
|-----------|------------|-----------|
| 1954..... | 10.0 | 6.9 |
| 1955..... | 10.8 | 6.9 |
| 1956..... | 8.5 | 6.2 |
| 1957..... | 9.4 | 5.3 |
| 1958..... | 11.6 | 4.7 |
| 1959..... | 12.2 | 4.4 |
| 1960..... | 10.6 | 4.2 |
| 1961..... | 7.3 | 5.7 |

Aluminum Conductor Wire and Cable

| Year | Alcoa % | Rome % |
|-----------|------------|-----------|
| 1954..... | 42.8 | 1.1 |
| 1955..... | 36.6 | 1.5 |
| 1956..... | 24.8 | 1.7 |
| 1957..... | 27.4 | 1.4 |
| 1958..... | 27.8 | 1.3 |
| 1959..... | 26.9 | 1.5 |
| 1960..... | 25.4 | 1.2 |
| 1961..... | 23.5 | 1.3 |

45(b). The relative market position of Alcoa and Rome combined in each of the three alleged aluminum conductor lines of commerce declined substantially both before and since the acquisition.

[fol. 4447]

Alcoa-Rome Market Percentages

| | 1954 | 1958 | 1961 | Decline Percentage Points | | |
|----------------------------------------------------|------|------|------|------------------------------|---------|---------|
| | | | | 1954-58 | 1958-61 | 1954-61 |
| ACSR and Aluminum Cable, Bare..... | 48.6 | 32.8 | 26.1 | 15.8 | 6.7 | 22.5 |
| Aluminum Wire and Cable, Insulated or Covered..... | 16.9 | 16.3 | 13.0 | 6.0 | 3.3 | 3.9 |
| Aluminum Conductor Wire and Cable..... | 43.9 | 29.1 | 24.8 | 14.8 | 4.3 | 19.1 |

46. There is no significant pattern or trend of mergers with respect to the manufacture and sale of aluminum conductor wire and cable products.

47. In addition to Alcoa's acquisition of Rome, the only acquisitions which relate in any way to aluminum conductor wire and cable products were Olin-Mathieson Chemical Corporation's acquisition of Southern Electrical Corporation in early 1957, Kaiser Aluminum and Chemical Corporation's acquisition of the Bristol plant of United States Rubber Corporation in early 1957, the Reynolds Metals Company's acquisition of the machinery of John A. Roebling's Sons Division of the Colorado Fuel and Iron Corporation in 1961.

48. Market statistics reflecting the market shares of the acquiring and acquired companies, both before and since the acquisitions are set forth in the following table:

Percentage Participation in Aluminum Conductor Wire and Cable

| | 1955 | 1956 | 1957 | 1958 | 1959 |
|--------------------------------|------|------|------|------|------|
| Southern Electrical..... | 5.4 | 8.1 | | | |
| Olin-Mathieson..... | 0.0 | 0.0 | | | |
| Combined Post-Acquisition..... | | | 5.6 | 4.5 | 5.0 |
| Kaiser..... | 21.9 | 19.5 | | | |
| U.S. Rubber..... | 0.8 | 0.8 | | | |
| Combined Post-Acquisition..... | | | 18.8 | 23.1 | 19.0 |
| Reynolds..... | 8.0 | 8.1 | 9.0 | 10.4 | 10.8 |
| Roebling..... | 0.0 | 0.0 | 0.0 | 0.0 | 0.1 |

49. The evidence fails to establish that Olin's acquisition of Southern and Kaiser's acquisition of the Bristol Plant of U. S. Rubber has hurt or will adversely affect competing manufacturers of aluminum wire and cable products.

[fol. 4448] 50. No competing manufacturer of aluminum conductor wire and cable products has complained that this acquisition has or may adversely affect his competitive position. On the contrary, representatives of Central Cable, Southwire, General Cable, Essex, Nehring and other wire and cable manufacturers stated that in the three years since the acquisition there had been no adverse effect. No manufacturer-witness testified that he foresaw any future adverse effect, as a result of this acquisition.

51. The evidence fails to establish that Alcoa's ability to offer a broad line of insulated products, including those made from copper, gives it any substantial competitive advantage in the sale of aluminum wire and cable products.

52. The evidence establishes that prior to the acquisition, there was not substantial or vigorous competition between Alcoa and Rome in the sale of aluminum conductor wire and cable products. Alcoa's loss of business in such products from 1957 to 1959 was insignificant.

53. In regard particularly to the overlap wire and cable products, Rome was not an aggressive price competitor. It adhered to a policy of not going below the prices of its competitors. It rarely participated in competitive bidding for ACSR; on insulated or covered products, it would generally quote on the basis of its published price schedules. Rome's adherence to this policy is established by the testimony of utility purchasing agents who stated, without contradiction, that Rome was not an initiator of price reductions.

54. As recently as 1951, there were only four manufacturers of insulated wire and cable using aluminum conductor. The evidence establishes that as of April 1, 1961, there were at least 29 producers of insulated aluminum wire and cable.

55. Companies equipped to manufacture more complicated insulated copper wire and the cable products, such as building wire, power cable and control cable, can readily manufacture the more simple products such as line wire and multiplex cable, using either copper or aluminum conductors, with its existing machinery and personnel.

56. The numerous manufacturers of insulated wire and cable constantly review their product lines and switch

readily from one product or conductor metal to another in accordance with market conditions. Such manufacturers not presently making insulated or covered aluminum products have considered whether or not to make such products, and would make them if profitable orders were obtained.

57. There has been substantial entry into the manufacture of ACSR and bare aluminum cable. Prior to 1940, Alcoa was virtually the only producer of these products; by 1950 there were 12 producers, most of whom were experienced copper wire and cable producers before getting into the ACSR field.

58. The evidence fails to establish or to permit the inference that any person has ceased or has been or probably will be deterred from entering into the manufacture and sale of aluminum conductor wire and cable products because of this acquisition.

59. Purchasers of the overlapping aluminum conductor products—ACSR and aluminum cable, bare, aluminum line wire, and aluminum multiplex cable—have not been and will not be adversely affected by the Rome acquisition.

60. Some of the utilities which formerly purchased from both Alcoa and Rome have sought to broaden the competitive base of their wire and cable purchasing. No difficulty has been encountered in expanding the supplier group.

61. Prior to the acquisition, Rome was a follower rather than an initiator of price reductions or concessions. It was rarely awarded business on the basis of competitive bidding.

62. The evidence establishes that there is vigorous competition among all manufacturers of aluminum conductor wire and cable products. The evidence fails to establish that any competitor of Alcoa and Rome, either integrated or non-integrated, has been or will be adversely affected by this acquisition.

[fol. 4450] 63. Non-integrated manufacturers of aluminum conductor wire and cable products will not be deprived of a source of aluminum as a result of Alcoa's acquisition of Rome.

64. Substantial quantities of aluminum are available from foreign sources. Canadian production alone in 1960 amounted to more than 1.5 billion pounds, or more than 35 percent of total U. S. primary aluminum production. Such foreign aluminum is suitable for use by wire and cable

fabricators and such fabricators have, in fact, purchased substantial amounts of foreign aluminum.

65. Alcoa's ability to supply non-integrated fabricators, including manufacturers of aluminum wire and cable, will not be affected by the acquisition of Rome. It has operated below capacity since 1957.

The following table shows Rome's pre-acquisition purchases of aluminum.

| Year | Total U.S. Primary Aluminum Production | Alcoa Primary Aluminum Production | Rome Primary Aluminum Purchases | (Thousands of Pounds) | |
|-----------|-------------------------------------------------|--------------------------------------------|------------------------------------------|------------------------------------------------------|-------------------------------------------------|
| | | | | Rome Primary Aluminum Purchases | |
| | | | | % of Total U.S. Primary Aluminum Production | % of Alcoa Primary Aluminum Production |
| 1954..... | 2,921,130* | 1,331,874* | 1,611* | .1% | .1% |
| 1955..... | 3,131,442 | 1,404,461 | 3,175 | .1 | .2 |
| 1956..... | 3,357,908 | 1,512,278 | 5,258 | .2 | .3 |
| 1957..... | 3,295,418 | 1,424,095 | 3,236 | .1 | .2 |
| 1958..... | 3,131,114 | 1,041,724 | 3,133 | .1 | .3 |

Under provisions of supply contracts with the General Services Administration, Alcoa is obligated to make available to non-integrated fabricators approximately 150,000,000 pounds of aluminum each year through 1971. Similar obligations on the part of Kaiser, Reynolds, and Harvey, make available to non-integrated users approximately 300,000,000 additional pounds of aluminum.

66. The acquisition of Rome by Alcoa will not bring about, enhance or aggravate any so-called "price squeeze" on non-integrated fabricators of aluminum wire and cable.

67. The evidence fails to establish that either Alcoa or Rome would have become a more significant factor in the manufacture and sale of aluminum wire and cable products if the acquisition had not occurred. Neither company had definite plans to expand its aluminum wire and cable production.

[fol. 4451] 68. The following table sets forth Rome's copper and aluminum wire and cable sales during the five full years preceding the acquisition.

| Year | (Thousands of Dollars) | | | Percent Copper |
|---------------------|------------------------|--------------------------|----------|-------------------|
| | Copper Wire & Cable | Aluminum Wire & Cable | Total | |
| 1954..... | \$27,142 | \$1,770 | \$28,914 | 93.9% |
| 1955..... | 36,921 | 2,458 | 39,379 | 93.8 |
| 1956..... | 39,119 | 3,646 | 42,765 | 91.5 |
| 1957..... | 26,992 | 2,888 | 29,880 | 90.3 |
| 1958..... | 21,261 | 2,191 | 23,452 | 90.7 |
| 1959 (1st Qr.)..... | 5,891 | 509 | 6,400 | 92.0 |

69. The evidence establishes that there is vigorous competition in the manufacture and sale of aluminum wire and cable products, that both integrated and non-integrated companies participate therein, and that there has been no reduction in the vigor of such competition since the acquisition.

70. Since Rome was not a primary aluminum producer, Alcoa and Rome did not compete in the sale of aluminum ingot whether used in the production of aluminum conductor wire and cable or otherwise.

71. Rome sold only limited amounts of aluminum redraw rod, of which only a de minimis amount was sold for electrical conductor use.

(a) Rome's sales of aluminum rod and the amounts sold for non-conductor and for conductor use are set forth in the following table:

| Year | Total EC Rod Sales | Sold for Non-Conductor | Sold for Conductor Use |
|-----------|-----------------------|---------------------------|---------------------------|
| | (Thousands of Pounds) | | |
| 1955..... | 5 | — | 5 |
| 1956..... | 139 | 124 | 15 |
| 1957..... | 418 | 341 | 77 |
| 1958..... | 387 | 372 | 15 |

(b) In its biggest year, 1957, Rome's rod sales for conductor use amounted to only about 3/10 of one percent of aluminum bar and rod sold by domestic primary aluminum producers to non-integrated producers of conductor wire and cable in that year. In addition, at least one other non-integrated fabricator sold aluminum rod, so that Rome's sales would be an even smaller percentage of the total.

[fol. 4452] 72. The evidence fails to establish that Rome probably would have become a more significant supplier of aluminum redraw rod to manufacturers of conductor wire and cable.

73. At the time of the acquisition and for several years prior thereto, Rome was producing its own aluminum redraw rod and purchased only de minimis amounts from others.

74. The evidence fails to establish that any competing supplier of aluminum ingot or rod has been or may be adversely affected by this acquisition.

75. The evidence fails to establish any reasonable prob-

ability that Alcoa's acquisition of Rome has or will substantially lessen competition or tend to create a monopoly in any of the alleged aluminum conductor lines of commerce.

76. The pre-acquisition market percentages of Alcoa and Rome are set forth in the following table, which gives figures for 1958:

| (Thousands of Dollars) | | |
|--------------------------------------|-----------|------------|
| Conductor Wire and Cable | | |
| | Shipments | Percent of |
| Industry..... | 1,553,955 | |
| Alcoa..... | 28,521 | 1.8 |
| Rome..... | 22,001 | 1.4 |
| Alcoa-Rome..... | 50,522 | 3.2 |
| Conductor Wire and Cable, Bare | | |
| Industry..... | 232,280 | |
| Alcoa..... | 24,020 | 10.3 |
| Rome..... | 4,579 | 2 |
| Alcoa-Rome..... | 28,599 | 12.3 |
| Wire and Cable, Insulated or Covered | | |
| Industry..... | 1,321,675 | |
| Alcoa..... | 4,501 | .3 |
| Rome..... | 17,422 | 1.3 |
| Alcoa-Rome..... | 21,923 | 1.6 |
| Service Drop | | |
| Alcoa..... | | 10.8 |
| Rome..... | | 5.1 |
| Alcoa-Rome..... | | 15.9 |

77. Alcoa and Rome were not substantially competitive in the manufacture and sale of bare conductor wire and cable products.

[fol. 4453] Industry and Alcoa and Rome shipments of bare conductor (aluminum and copper) products for 1958 are shown in the following table:

| | (Thousands of Dollars) | | | | | |
|-------------------------------------------|------------------------|-----------------|------|----------------|-----|--|
| | Industry Shipments | Alcoa Shipments | % | Rome Shipments | % | |
| ACSR and aluminum cable, bare..... | \$62,392 | 23,883 | 10.2 | 258 | .1 | |
| Bare conductor aluminum wire..... | 13,395 | 137 | .1 | — | — | |
| Bare conductor copper wire and cable..... | 156,493 | — | — | 4,553 | 1.9 | |
| | 232,280 | 24,020 | 10.3 | 4,811 | 2.0 | |

78. Alcoa and Rome were not substantially competitive in the manufacture and sale of insulated or covered wire and cable products. Both before and since the acquisition, Rome has manufactured a relatively full line of insulated wire and cable products, chiefly made from copper. Alcoa's pre-acquisition participation in the insulated wire and cable field was limited to aluminum covered line wire and multiplex cable, amounting in 1958 to 3/10 of 1 percent of total insulated or covered wire and cable shipments.

79. Alcoa's acquisition of the assets of Rea Magnet Wire Company on January 18, 1960 is without significance to any issue in this case.

80. Since Alcoa sold only aluminum bare and insulated or covered wire and cable products, the facts found with respect to the alleged aluminum conductor lines of commerce are also pertinent to the broader conductor lines of commerce.

81. The electrical wire and cable industry, including both copper and aluminum products, is characterized by vigorous competition. Upwards of 200 companies manufacture and sell electrical wire and cable, among them being many strong, well-financed and highly reputable concerns.

82. The evidence fails to establish any trend toward concentration in the manufacture and sale of wire and cable products.

[fol. 4454] 83. On the basis of 1958 Census of Manufactures data, Alcoa in 1958 had 10.8 percent and Rome 5.1 percent of total industry shipments of service drop cable. The Census figures cannot be taken as a reliable measure of industry shipments of service drop products since they do not include weatherproof wire and used as service drop which is reported to Census under a different classification. There is no evidence as to the amount of weatherproof wire used as service drop.

84. There is no company that makes only multiplex cable. On the contrary, it is only one of numerous insulated wire and cable products made by insulating companies. It is among the simplest of such products, and any company equipped to manufacture any other insulated wire and cable product, can use its existing machinery and personnel to make multiplex cable.

85. The evidence establishes that manufacturers not presently making multiplex cable constantly review their product lines, have considered entering into the manufacture of multiplex cable, and would be capable of doing so if market conditions warranted.

86. Aluminum has gained greater acceptance in multiplex cable than in any other insulated product. Prior to the acquisition, Alcoa sold only aluminum multiplex cable and Rome's multiplex cable was approximately 80 percent aluminum. The same is true as to other insulators for which data are available. Accordingly, the facts established with respect to the lack of effect of this acquisition on competition in the aluminum conductor lines of commerce are pertinent here.

87. The evidence fails to establish any reasonable probability that Alcoa's acquisition of Rome has or will substantially lessen competition or tend to create a monopoly in any of the alleged conductor wire and cable lines of commerce.

[fol. 4455] Conduit

88. There is no reliable evidence as to the pre-acquisition market shares of either Alcoa or Rome with respect to conduit, both steel and aluminum, or aluminum alone.

Based upon a 1960 Bureau of the Census report, defendants' combined share of the total conduit market in 1960 was 6.9 percent. Based upon the same report, their combined 1960 share of conduit, other than steel, including aluminum conduit, was 26.5 percent.

The evidence shows the above report is based upon a survey undertaken for the first time in 1960 and lacks conclusiveness.

89. The evidence fails to establish that the acquisition has eliminated substantial actual or potential competition between Alcoa and Rome in the manufacture and sale of conduit or aluminum conduit.

90. Prior to the acquisition, Alcoa made and sold only aluminum conduit and Rome made and sold only steel conduit.

91. Alcoa's sales of aluminum conduit in the area where Rome sold most of its steel conduit were de minimis, rang-

ing between \$10,000 and \$54,000 per year in the five years preceding the acquisition.

92. There are no substantial barriers to entry. Any company having extruding equipment can enter the aluminum conduit field by adding equipment needed for threading, labeling and lubricating which can be purchased for from \$10 to \$15 thousand.

93. The number of companies owning extrusion equipment has increased from 39 in 1950 to 110 in 1955, and to 133 in 1960.

94. It has not been shown that any company has been or will be deterred from entering the conduit field as a result of the Rome acquisition.

95. It has not been shown that purchasers of conduit or aluminum conduit have been or may be adversely affected in any way by Alcoa's acquisition of Rome.

[fol. 4456] 96. It has not been established that any non-integrated manufacturer of aluminum conduit has been or may be adversely affected by this acquisition.

97. The decline in aluminum conduit prices since about 1958 is directly related to the competitive contest between steel and aluminum conduit.

98. The pricing of aluminum conduit to be competitive with steel was initiated by Hazelwood, a non-integrated producer, in about 1958 and continues as the result of such competition.

99. There is vigorous competition in the manufacture and sale of conduit and aluminum conduit. This competition has increased appreciably in recent years owing to the wider use and acceptance of aluminum conduit.

100. The evidence fails to establish any reasonable probability that Alcoa's acquisition of Rome has or will substantially lessen competition or tend to create a monopoly in the manufacture and sale of either aluminum conduit or conduit, including both steel and aluminum, in either the United States or the eleven western states.

Conclusions of Law

1. This Court has jurisdiction of the parties to and the subject matter of this action.

2. The manufacture and sale of each of the following products or product groups constitutes an appropriate line

of commerce within the meaning of Section 7 of the Clayton Act:

- Item 2. ACSR and aluminum cable, bare.
- Item 4. Aluminum ingot and rod used in the production of aluminum conductor wire and cable.
- Item 5. Conductor wire and cable (aluminum and copper).
- Item 7. Wire and cable, insulated and covered (aluminum and copper).
- Item 9. Conduit (aluminum and steel).

[fol. 4457] 3. Plaintiff has failed to prove by a preponderance of the evidence that the manufacture and sale of any of the following products or product groups constitutes an appropriate line of commerce within the meaning of Section 7 of the Clayton Act:

- Item 1. Aluminum conductor wire and cable.
- Item 3. Insulated or covered aluminum wire and cable.
- Item 6. Conductor wire and cable, bare (aluminum and copper).
- Item 8. Service drop cable (aluminum and copper).
- Item 10. Aluminum conduit.

4. The United States as a whole constitutes a section of the country within the meaning of Section 7 of the Clayton Act with respect to each of the ten lines of commerce alleged in this case.

5. Plaintiff has failed to prove by a preponderance of the evidence that the eleven western state area, consisting of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming, is an appropriate section of the country within the meaning of Section 7 of the Clayton Act with respect to either the conduit or the aluminum conduit line of commerce.

6. Plaintiff has failed to prove by a preponderance of the evidence that the effect of Alcoa's acquisition of the assets and properties of Rome may be substantially to lessen com-

petition or to tend to create a monopoly in any line of commerce in any section of the country.

7. Plaintiff has failed to prove by a preponderance of the evidence that the effect of Alcoa's acquisition of the assets and properties of Rome may be substantially to lessen competition or to tend to create a monopoly in any of the following lines of commerce, either in the United States as a whole or in the eleven western states (assuming that area to be an appropriate section of the country):

[fol. 4458] Item 2. ASCR and aluminum cable, bare.

Item 4. Aluminum ingot and rod used in the production of aluminum conductor wire and cable.

Item 5. Conductor wire and cable (aluminum and copper).

Item 7. Wire and cable, insulated and covered (aluminum and copper).

Item 9. Conduit (aluminum and steel).

8. Assuming each of the following to have been established as an appropriate line of commerce, plaintiff has failed to prove by a preponderance of the evidence that the effect of Alcoa's acquisition of the assets and properties of Rome may be to substantially lessen competition or to tend to create a monopoly therein, either in the United States as a whole or in the eleven western states (assuming that area to be an appropriate section of the country):

Item 1. Aluminum conductor wire and cable.

Item 3. Aluminum wire and cable, insulated or covered.

Item 6. Conductor wire and cable, bare (aluminum and copper).

Item 8. Service drop cable (aluminum and copper).

Item 10. Aluminum conduit.

9. Plaintiff has failed to prove by a preponderance of the evidence that the acquisition of the assets and properties of Rome by the defendant Alcoa violates Section 7 of the Clayton Act.

10. Plaintiff has failed to establish the claims or cause of action alleged in the complaint and the relief requested therein shall be and hereby is denied and this suit dismissed, and

Judgment is directed accordingly.

/s/ Stephen W. Brennan, U. S. District Judge.

Dated: January 28, 1963.

[fol. 4458a] [File endorsement omitted]

[fol. 4459] IN UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

Civil No. 8030.

UNITED STATES OF AMERICA, Plaintiff,

against

ALUMINUM COMPANY OF AMERICA and ROME CABLE
CORPORATION, Defendants.

Appearances:

Honorable Justin J. Mahoney, United States Attorney, Attorney for Plaintiff, Federal Building, Albany, New York. Ferris, Hughes, Dorrance & Groben, Attorneys for Defendants, First National Bank Building, Utica, New York. Bergson & Borkland, Attorneys for Defendants, 918 16th Street, N.W., Washington, D. C. William K. Unverzagt, Esq., Attorney for Defendants, 1501 Alcoa Building, Pittsburgh 19, Penna.

Donald F. Melchior, Esq., Charles D. Mahaffie, Jr., Esq., Richard J. Wertheimer, Esq., Attorneys, Department of Justice, Washington, D.C., Of Counsel. Robert Groben, Esq., John Liddy, Esq., Attorneys, of Counsel. Herbert A.

Bergson, Esq., Howard Adler, Jr., Esq., Hugh Latimer, Esq.,
John Voortman, Esq., Attorneys of Counsel.

Antitrust Action—Violation of Section 7, Clayton Act

Tried Feb. 5—Mar. 1, 1962; Submitted Aug. 18, 1962.

OPINION—Decided January 28, 1963

BRENNAN, Judge

This is a civil antitrust action brought by the United States against the Aluminum Company of America, hereinafter referred to as "Alcoa" and the Rome Cable Corporation, hereinafter referred to as "Rome" to annul the acquisition by Alcoa of the stock and assets of Rome.

The complaint in this action was filed April 1, 1960 and charges that the acquisition, above referred to, is in violation of Section 7 of the Clayton Act, 15 U.S.C. §18. The complaint seeks the usual relief in this type of case—to wit: an order of divestiture and injunction against further acquisitions and such other and further relief as may be just and proper. Defendants' answers, while admitting certain allegations of the complaint, deny that the transaction involved is in violation of the statute. No question is raised as to the jurisdiction of this court.

On March 31, 1959, pursuant to a prior agreement, Alcoa acquired all of the assets of Rome by an exchange of stock of the two corporations. Title to the assets of Rome was taken in a newly formed corporation also known as the Rome Cable Corporation. The new company is a wholly owned subsidiary of Alcoa and, since the acquisition, has been operated as a division thereof. The crux of the litigation arises from plaintiff's contention that the effect of such acquisition may be substantially to lessen competition or tend to create a monopoly in certain lines of commerce consisting principally of wire and cable products—all in violation of Section 7 of the Clayton Act.

Brief reference is made at this point to the defendants and the general nature of their business activities in order to afford an insight into the more detailed discussions to follow.

Alcoa is a fully integrated aluminum producer. In the manufacturing process, it refines aluminum bearing ore into primary aluminum and converts same into intermediate and various aluminum end products. It manufactures such products in several states and sells and ships same in various forms throughout the United States and in foreign countries.

Rome was incorporated in 1936. It was and is primarily engaged in the manufacture of wire and cable products in which copper was and is the predominant metal used in its operations. In 1952 Rome installed equipment for the manufacture of aluminum rod from aluminum ingot purchased from primary producers. It began producing such rod for its own use in 1953. Thereafter it began to manufacture and sell certain types of aluminum wire and cable in addition to its broad line of copper products.

[fol. 4461]

The Law

Before proceeding to discuss Alcoa's and Rome's position in the markets in which they are active participants, it would seem logical to refer briefly to the legal principles involved. An understanding of the language and purpose of the statute is essential as an approach is made to the decision which must necessarily involve the recognition of the prohibitions imposed and the application of same to the facts disclosed.

The basis of this action rests upon the provisions of Section 7 of the Clayton Act, 15 U.S.C. §18; the relevant part of which is quoted below.

"No corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly."

The language of the above statute, taken alone, poses problems both in its construction and application. The courts have proceeded upon a case-to-case basis to construe and apply the statute to the facts of a particular litigation. It

seems fair to state that the law involved is still in a state of development and that no formula, possessing rigidity, may be applied. This is necessarily so since the statute deals with reasonable probability in the constantly changing economy in which we live.

The recent decision of the Supreme Court in *Brown Shoe Co. v. U. S.*, 370 U. S. 294 is, as stated therein, the first case coming before that court wherein an analysis of the scope and purposes of the statute, as it now exists, was necessary [fol. 4462] to the issue raised. It would seem to follow that reference to the holdings in that decision would be more profitable than to discuss how far the previous landmark decisions under the Sherman Act are applicable or to reconcile or distinguish decisions of circuit and district courts which had decided Section 7 cases prior to the *Brown Shoe* decision. The most often quoted decisions, referred to above, are either cited or are found in the notes in the *Brown Shoe* opinion and their application may be gathered from the text thereof.

The legislative history of the statute is discussed in the above *Brown Shoe Co.* decision and does not require repetition here. Such discussion appears to confirm some previously stated purposes of the statute and sets at rest certain controversies relative to the meaning and application thereof. This court's understanding thereof is summarized below and the quotations therein are, unless otherwise indicated, taken therefrom.

Congress considered that "... a rising tide of economic concentration in the American economy" was an evil to be curbed. Effective competition and the protection of small businesses were results to be accomplished. The statute was intended to supply a deficiency in the existing statute and to apply to all types of mergers. Its purpose was to curb monopolistic acts at their beginnings or incipency rather than await their fruition and the standards for judging their legality are broader than, but may include, those applied in Sherman Act violations. All mergers however are not to be condemned. Condemnation is limited to those having "demonstrable anticompetitive effects" although such demonstration is satisfied by a probability. Certainty is not required. Proof of probability is sufficient provided the menace to competition is clear-cut as distinguished from

a temporary condition or an "ephemeral possibility". No particular tests are provided in the statute to measure either [fol. 4463] the product or geographic market. Neither are qualitative or quantitative tests controlling in measuring the effect of a merger. Both measurements must be made in the light of all the relevant factors which may vary in accordance with the facts of the particular acquisition under consideration.

In addition to the above summary of the discussion of the legislative history as gathered from the opinion in the Brown Shoe case, the decision therein, in its holdings seems to otherwise clarify the vagueness of the language of the statute and afford something of a guide to the trial courts in their application to the facts of the litigation before them.

The lines of commerce or product market may consist of both broad and submarket lines. No rigid formula exists for their determination. The realities of competition are the ultimate test. The broad market line may be extended to cover a product where there exists "the reasonable interchangeability of use or the cross-elasticity of demand between the product itself and substitutes for it". Seven "practical indicia" are set forth as factors to be considered in determining the boundaries of a submarket. They are (1) industry or public recognition of the submarket as a separate economic entity, (2) the product's peculiar characteristics and uses, (3) unique production facilities, (4) distinct customers, (5) distinct prices, (6) sensitivity to price changes, and (7) specialized vendors. The existence or non-existence of each of the above indicia is not determinative of the problem in itself. All relevant facts must be considered and we are admonished "to recognize competition where in fact competition exists". Peculiar characteristics and uses may be one of such indicia but it is not determinative. To be of effective weight, they must be so peculiar as to render the product "non-competitive".

In determining the impact of the merger, the size of the share of the market foreclosed is not decisive unless it approaches monopoly proportions or is of de minimus effect. [fol. 4464] The market shares held by the merged companies are an index of market power to be applied in all aspects of the realities of competition in "an economically significant market". Mergers may not be condemned per se upon

the basis of such shares alone; same "will seldom be determinative". The purpose of the merger is a most important factor as is the existence of trends toward concentration in the industry. The testimony of those engaged in industry has its weight and significance although "It is competition, not competitors, which the Act protects". An evaluation of the competitive realities disclosed, based upon a pragmatic factual approach, would seem to be the obligation of the trier of the facts.

The Industry

The litigation involves principally the effect of the merger as tending to lessen competition in certain aluminum product lines of commerce. In the decision of *Brown Shoe Co. Inc. v. U.S.*, supra, at 321, we find the following quotation: "... Congress indicated plainly that a merger had to be functionally viewed, in the context of its particular industry" and at page 329 the court refers to the examination of "economic and historical factors" as necessary to the decision. It follows that the facts must be weighed and the law applied with some understanding of the industry as a whole and the status of both *Rome* and *Alcoa* therein.

The history of the aluminum industry in this country from its beginning to World War II is for all practical purposes a history of *Alcoa* itself. The economic demands of World War II account for the entry of competing primary aluminum producers, the details of which may be gathered from the lengthy court decisions which involve the position of *Alcoa* in the business of aluminum production and the sale of aluminum products within the United States. Such details [fol. 4465] may be gathered from the decisions—*U. S. v. Alcoa*, 44 F. Supp. 97; *U. S. v. Alcoa*, 148 F. 2d 416; *U. S. v. Alcoa*, 91 F. Supp. 333 and *U. S. v. Alcoa*, 153 F. Supp. 132. It is sufficient to say that principally due to government action during the above period, *Reynolds Metal Company* and *Kaiser Aluminum and Chemical Corporation* shared with *Alcoa*, then and now, a place in the aluminum industry as fully integrated aluminum producers.

The above corporations are described in their activities as fully integrated in that their facilities permit the processing of the necessary materials from the mine through the intermediate stages to the finished aluminum product. Statistics

appear to be first available in the above process when same reaches the primary aluminum stage, so that for all practical purposes we are not particularly concerned with the status of industry prior to the production of primary aluminum. Three additional corporations have since 1955 joined Alcoa, Kaiser and Reynolds as such producers. These corporations—Ormet, Inc., (Olin Mathieson), Harvey Aluminum Company and Anaconda Aluminum Company, although not as fully integrated as Alcoa, Kaiser and Reynolds, are producers of primary aluminum. The above corporations are in a position to manufacture and sell aluminum billet, pig, ingot and rod which are termed intermediate products. Each of the above corporations, except Harvey, fabricates the intermediate products into numerous finished merchantable items, intended directly for consumer use. Included in such items are the wire and cable products urged as proper lines of commerce in this case. The five above companies, thus engaged in processing intermediate aluminum products, are considered as "integrated producers" as the term is used in this litigation.

[fol. 4466] An indication of the status of the above companies engaged in producing primary aluminum may be gathered from the exhibit set out below—

Aluminum Ingot Capacity Existing or Under Construction at the End of 1960
(Short Tons)

| Company | Capacity | Percent of U.S. Total |
|----------------------------------|-----------|-----------------------------|
| United States Total | 2,655,750 | 100.0 |
| Aluminum Company of America | 1,025,250 | 38.6 |
| Reynolds Metals Company | 701,000 | 26.4 |
| Kaiser Aluminum & Chemical Corp. | 609,500 | 23.0 |
| Ormet, Inc. | 180,000 | 6.8 |
| Harvey Aluminum | 75,000 | 2.8 |
| Anaconda Aluminum Company | 65,000 | 2.4 |

The above percentage of total capacity of Alcoa differs slightly from that provided by the defendant which is set at 35%. This may be accounted for by the fact that Alcoa abandoned construction of a plant in Indiana when it was apparent that there was an oversupply of capacity. No doubt production figures are more meaningful than the above since it appears that 15% of Alcoa's primary aluminum capacity was unused in 1960. Alcoa's percentage of United States primary aluminum for 1960 was 36% of

the total supply, having declined 9% from 1956. That Alcoa's percentage of such production has declined over a period of years is self-evident from the entry of new producers as indicated above but it would seem to be fair to say that the three principal producers supply around approximately 80% of such production. The record is indicative of a further increase in domestic aluminum capacity and production, both from the documentary evidence and [fol. 4467] the oral testimony. This increase would come about by entry of new producers and the increase in production capacity of Alcoa's present competitors.

Only brief reference need be made to the copper industry since it is involved only to a limited extent in this controversy. Copper products are manufactured from an ore from which intermediate products are refined and the end product eventually produced for consumer use. Like aluminum, there are companies which are so integrated as to be able to refine and produce copper products from the original ore to the finished items. Such companies sell intermediate products, such as ingot, to processors or fabricators, who then process same for ultimate use in their final form. There is no contention here that the merger involved has anti-competitive impact in the copper industry as a whole or upon the integrated copper producers or fabricators. No further discussion of the copper industry appears to be necessary.

We now turn to a brief discussion of the industry as it pertains to the particular lines of commerce involved in this litigation. The lines of commerce which are principally litigated here consist of those products capable of conducting electricity and are generally referred to as wire and cable products. While it is claimed that some of such lines involve both aluminum and copper, emphasis is placed principally upon aluminum wire and cable which are the end products of processing or fabricating an intermediate aluminum product such as ingot into the completed wire and cable which may be of various sizes, electrical conductive capacity and of different weight, size and strength.

There are a large number of firms engaged in the fabrication of wire and cable copper products. There are a lesser number of such fabricators engaged in the business of fabricating aluminum products. As the word "fabricators"

is used in this litigation, it is distinguished from the integrated aluminum and copper producers who also fabricate [fol. 4468] and sell their end products. Upwards of two hundred fabricators are engaged in the manufacture of both aluminum and copper wire and cable products. There is a vigorous competition as to wire and cable between the integrated companies among themselves and between those fabricators whose process of manufacture begins with the intermediate product purchased from a primary aluminum producer. This active competition is also evident as between aluminum and copper wire manufacturers whose product may be used interchangeably. In other words, there is a lively competition between aluminum and copper products in certain areas which is accounted for by the increasing use of aluminum products and the economic factors which apply thereto. Both the aluminum and copper industries are important factors in the present day economic and business life. They maintain effective and costly research departments designed to improve the efficiency of their products and to create new uses therefor. Both the copper and aluminum industry must meet competition at the intermediate manufacturing stage from foreign countries or concerns. Canada produces primary aluminum equal to about 35% of the total United States production and supplies a significant portion thereof which is available to this country's fabricators. European producers apparently furnish a small portion of primary aluminum for the use of American fabricators. In view of the above, no shortage in primary aluminum is foreseeable.

The Status of Alcoa and Rome in the Industry

Since Alcoa has not been engaged in the manufacture of copper products, its place in the industry, above described, is limited to the production, manufacture and sale of aluminum products. Its position in the aluminum industry is to some extent apparent in the above discussion.

[fol. 4469] Alcoa still maintains its position as the leading producer of primary aluminum. Its share in that market, as may be expected, has declined sharply since the entrance of competitors in that field. This decline has been reasonably consistent since the newcomers in the field

reached productive capacity. In 1948, Alcoa had 52% of United States primary aluminum production. It declined to 45% by 1956 and from 1956 to 1960, it declined to 36%. Its percentage of primary aluminum capacity has declined substantially in the same manner.

Alcoa manufactures and sells a variety of aluminum products. This litigation however involves primarily wire and cable products so that reference to its position in the market will be limited thereto. Alcoa pioneered the use of aluminum as an electrical conductor and sold substantially all of the aluminum cable used for electrical transmission in the United States prior to World War II. Since that time, Alcoa has encountered increased competition and its relative participation in the above market has declined materially. Its principal products in that field are bare aluminum cable and ACSR (aluminum covered steel reinforced). ACSR is a bare aluminum cable with a steel core primarily used by utilities in the overhead transmission of electric current. Alcoa's share in ACSR and bare aluminum cable declined from 48.4% in 1954 to 32.5% in 1958 and to 26.1% in 1961. Its second principal product is known as aluminum conductor wire and cable. Its share in that product declined from 42.8% in 1954 to 27.8% in 1958 and to 23.5% in 1961. The decline in the above market percentages is reasonably consistent between the dates above mentioned and continuing since the acquisition. Alcoa's third such product is known as aluminum wire and cable, insulated or covered. Its share in that item varied from 10% in 1954 to 11.6% in 1958 and to 7.3% in 1961. The comparatively recent increase in demand for covered or insulated aluminum conductor wire found Alcoa in an unfavorable market position. It manufactured line wire and multiplex cable with a polyethylene insulation or covering but it lacked [fol. 4470] the know-how and the facilities for the manufacture of the more complicated line of insulated aluminum wire and cable products.

In March 1952 Alcoa and Rome entered into a continuing agreement referred to as a "tolling agreement" whereby Rome would cover or insulate bare aluminum wire with the more complicated insulated constructions. This arrangement broadened the scope of Alcoa's ability to provide insulated wire products to its trade.

As already indicated, Rome was primarily the manufacturer of copper products, including wire and cable. It has been successful in its manufacturing efforts and expanded same so that at the time of its acquisition it had plants at Rome, New York; Torrance, California; and Collegeville, Pennsylvania. It maintained an active and efficient research department and sales organization. Prior to its acquisition by Alcoa, Rome was one of the ten largest manufacturers of copper conductor wire and cable in the United States. In 1952, Rome installed equipment for the manufacture of aluminum rod from aluminum ingot purchased from primary producers. It began producing such rod for its own use in 1953. Thereafter it began to manufacture and sell certain types of aluminum wire in addition to its broad line of copper products. In the course of its experience and research, Rome developed a special aptitude or skill in the matter of insulating wire and cable. It manufactured a relatively full line of the more complicated insulated wire and cable, designed and built to meet customers' requirements. This skill prompted the so-called "tolling arrangement" between Alcoa and Rome, referred to above.

At the time of the merger, here under consideration, only five products were manufactured and sold by both Alcoa and Rome and their direct competition in the market was limited thereto. These products may be identified as follows—(1) ACSR and bare aluminum cable; (2) covered [fol. 4471] line wire or weather-proof; (3) multiplex cable; (4) conduit; (5) aluminum redraw rod. The market shares of Rome and Alcoa in these competitive products, generally speaking, were not great and a further discussion of same may better be considered in the discussion of the impact of the merger upon or within the competitive market.

In this type of action, a burden is imposed upon the plaintiff to establish three essential elements, listed below, in order to establish a violation of the statute. (1) The relevant products markets or "lines of commerce"; (2) the geographic markets within which the impact of the merger may be measured as to each such line of commerce; and (3) the substantial lessening of competition or tendency to create a monopoly in any such line of commerce in the relevant geographic area. The proof as to these elements will be discussed in the order in which they are mentioned above.

Lines of Commerce

The Government offers proof as to ten lines of commerce and contends that each has been established thereby as applicable in this action. The defendants agree that four such lines of commerce are appropriate and disputes the relevancy of the remaining six lines and the sufficiency of the proof to establish same. There is set out below the list of specific products as contended by plaintiff, showing which are agreed upon and those in dispute. The position in which they appear below follows the order of the proof and the order in which they are discussed in the submitted briefs.

| | | | |
|------|----|-------------------------------------------------------------------------------------|-----------|
| Item | 1 | Aluminum conductor wire and cable. | In issue. |
| " | 2. | Bare aluminum cable and ACSR. | Agreed. |
| " | 3. | Insulated or covered aluminum wire and cable. | In issue. |
| " | 4. | Aluminum ingot and rod used in the production of aluminum conductor wire and cable. | In issue. |
| " | 5. | Conductor wire and cable (aluminum and copper). | Agreed. |

[fol. 4472]

| | | | |
|------|-----|--------------------------------------------------------------|-----------|
| Item | 6. | Conductor wire and cable, bare (aluminum and copper). | In issue. |
| " | 7. | Wire and cable, insulated and covered (aluminum and copper). | Agreed. |
| " | 8. | Service drop cable (aluminum and copper). | In issue. |
| " | 9. | Conduit (aluminum and steel). | Agreed. |
| " | 10. | Aluminum conduit. | In issue. |

The Government relies in its brief upon the peculiar characteristics and uses test as the bases upon which a finding of the relevant lines of commerce may rest. This test may find support in such decisions as *A. G. Spalding & Bros. Inc. v. F.T.C.* 301 F.2d 585; *Crown Zellerbach v. Federal Trade Commission*, 296 F.2d 800 and *U. S. v. Bethlehem Steel Corp.*, 168 F.Supp. 576 but by the decision in the *Brown Shoe* case, such test is but one of seven of the "practical indicia" which may serve as a guide in determining submarket lines. Even if so used, such characteristics and uses must be such as to render the product "generally non-competitive".

The consideration and determination of the lines of commerce issue is made having in mind the discussion of the problem in the *Brown Shoe* case and the rules or guides laid down therein and referred to above.

Items 1, 2 and 3 are generally referred to herein as the

aluminum conductor lines and are so related as to be discussed together.

Since Item 1 is a rather broad line and is simply a combination of Items 2 and 3, the latter two should first be determined. Item 2, bare aluminum cable and ACSR, is a heavy cable product which has practically displaced copper for use in overhead transmission lines. It is agreed that same constitutes a line of commerce here.

Item 3, insulated or covered aluminum wire and cable, is not a line of commerce because it is not recognized in the industry as a separate economic entity. While differing in some characteristics and preferred uses from its copper counterpart, they both perform the same functions and it is not "generally non-competitive" with copper. The Government's evidence shows in 1959 that insulated copper [fol. 4473] conductor comprised 22.8% of the gross additions to insulated overhead distribution lines. Both aluminum and copper wire may be produced interchangeably, using the same facilities. Covered aluminum wire has no distinct customers as distinguished from covered copper wire purchasers. Neither has it specialized vendors. Insulated aluminum and copper wire are generally functionally interchangeable. Their purchase and use are likewise principally dictated by economic factors. While aluminum wire and cable is sold at prices generally distinct from copper and does not have the same price sensitivity, these factors do not destroy the conclusion that covered aluminum wire and cable is in actual competition with its copper counterpart and may not be found as a line of commerce herein. A different conclusion would ignore the admonition, "But the boundaries of the relevant market must be drawn with sufficient breadth to include the competing products of each of the merging companies and to recognize competition where, in fact, competition exists".

Since Item 1 is a broad line embracing both Items 2 and 3 and Item 3 is held not to be a proper line of commerce, their combination cannot result in a line of commerce. To find that Item 1 is a line of commerce extends the outer boundaries of the market beyond its legal limits because covered copper wire and cable is interchangeable in use and there is cross-elasticity of the demand therefor between

insulated or covered aluminum and copper. To constitute a proper line of commerce, same must include the substitutes therefor which are reasonably interchangeable in use and for which there is a cross-elasticity of demand.

The above conclusion is fortified by the inconsistent position taken by the Government, at least as far as the vertical aspect of the merger is involved. The plaintiff contends here that insulated aluminum wire and cable is a line of commerce and therefore competitively distinct from insulated copper but agrees as to Item 7 that insulated aluminum and insulated copper constitute a single line of commerce.

Item 4, aluminum ingot and rod, used in the production of aluminum conductor wire and cable is simply a grade of aluminum generally referred to as E.C. (electrical conductor). It is but one of 173 recognized aluminum alloys which may be manufactured interchangeably at the will of the producer. All six integrated primary aluminum producers produce various of such alloys including aluminum of E.C. grade which is required by industry standards to contain a minimum aluminum content of 99.45%. Generally the standard is met by the addition of a small percentage of boron to "a high purity pig". The purifying boron however may be added to the ingot during the course of the fabricating process. The rod represents a further product in the reduction of the ingot to the desired wire or cable size. It results from a continuing casting and rolling process and assumes a form or shape which is the starting point for most wire fabricators in their operation.

Although it may be doubtful that ingot and rod of the E.C. grade should be fragmented from the many aluminum alloys, it seems that it satisfies the most of the indicia laid down by the Brown Shoe decision and will be found as a line of commerce in this action.

Items 5, 6, 7 and 8 are generally referred to as conductor lines. They embrace both aluminum and copper wire and cable as distinguished from the four items discussed above which involve aluminum conductor only.

Item 5, conductor wire and cable (aluminum and copper), is a broad line covering all such products whether bare or insulated. Both litigants have agreed that same, together

with Item 7, wire and cable, insulated and covered, (aluminum and copper) may also be considered as a line of commerce here.

[fol. 4475] The first dispute arises when the defendants contend that the broad line, referred to above, may not be broken down by separating therefrom, as a separate line, Item 6, conductor wire and cable, bare. The court adopts such contention and holds that Item 6 does not constitute a proper line of commerce. Such a grouping would include bare aluminum wire and cable and ACSR. The Government has already asserted and agreed that such products are not competitive with copper or interchangeable therewith. In fact, these products are used in the overhead transmission field to the practical exclusion of copper. Grouping them together in Item 6 does not define a single product market. The Bureau of the Census has established separate product classifications for bare copper and for bare aluminum wire and cable. Because a broad line of commerce may be proper does not mean that it may be broken down into all possible fragments.

The proof as to Item 8, service drop cable (aluminum and copper), asserted by the Government as a line of commerce, is rather confusing. As so urged, it is referred to as multiplex cable and consists of one or more insulated conductors twisted around a cable or uninsulated conductor. This contention seems to again recognize that insulated aluminum is not competitively distinct from insulated copper wire and cable.

The product is or can be made by any manufacturer equipped to produce insulated wire or cable and is simply a separation of a particular item from the many other insulated products. Its use is primarily to carry electricity from the distribution point of the utility to the home or business place of the user and as secondary distribution lines carrying no more than 600 volts. The most popular type is of triplex construction and same is displacing open wire or weatherproof wire as a more popular product for service drop, especially in new construction. The evidence is inconclusive as to amount of product known as service drop as distinguished from its use for other purposes including secondary distribution. As just indicated, weatherproof wire is still used as a service drop product from the utility

pole to the entrance of the user's premises. No reliable data is available as to the extent of such use at the times [fol. 4476] relevant here. Two other types of cable, known as type "K" and type "SD" are presently used for the above purpose in particular localities. It would seem that to constitute a line of commerce, the substitutes for multiplex cable for secondary distribution use, weatherproof and the two types of cable, referred to above, may not be eliminated from consideration as a part of the service drop product line. Their absence, together with a consideration of the indicia, referred to herein, leaves the proof something less than convincing. If a product line is designated in terms of function, it must include all competitive substitutes accomplishing the same result. The Item is held not to be a relevant line of commerce herein.

The Geographic Market

The litigants have agreed that in respect to all of the above lines of commerce, whether or not allowed as such herein, the United States as a whole constitutes a section of the country within the contemplation of Section 7 of the Clayton Act.

Item 9, conduit (aluminum and steel), has been agreed upon as a line of commerce. This item includes both rigid conduit and electrical metallic tubing (EMT). It is simply a metallic enclosure to protect lines or cables carrying electric current from outside injury or harm.

Controversy again arises in the matter of the Government's contention that the above broad conduit line may be separated by a submarket line of aluminum conduit alone. The contention is based principally on the separate characteristics and uses test. This single test, as indicated above, is not conclusive; in fact it is not applicable where such characteristics and uses do not render it generally non-competitive. Here the great weight of evidence is to the effect that aluminum and steel conduit are in direct and vigorous competition for the consumer trade. They are functionally interchangeable; alternate quotations are frequently sought by consumers and they react or are related in price change to each other. Aluminum conduit, taken [fol. 4477] alone, fails to meet the majority of the pre-

scribed tests as a separate submarket and the contention of plaintiff that Item ten is a relevant line of commerce is rejected.

The Geographic Market

There is no dispute but that the United States as a whole is an appropriate section of the country in which the impact of the merger may be considered as to both steel and aluminum conduit and aluminum conduit alone. The Government claims however, that eleven western states (Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming) also constitute an appropriate geographic market for both of the above products. The claim is based upon the fact that the greater portion of Rome's total sales of conduit prior to the merger was made to customers within that area. The above statement is also true as to sales made after the merger. The evidence fails to show that such sales were made in that area as a particular market. Rome's sales expanded from a six state area to a fourteen state area. The above eleven state area was used because data within same was available for comparison purposes. The evidence shows that freight rates and commercial realities are such that outside or eastern producers can ship conduit within the eleven state area and compete effectively with western producers.

In other words the purchaser within that area can turn for supplies to a producer located in any section of the country. *Tampa Electric Co. v. Nashville Co.*, 365 U.S. 320 at 327. The eleven state area is rejected as a proper geographic market in which to measure the impact of either conduit lines of commerce.

[fol. 4478] The Competitive Effect of the Acquisition

The competitive effect of the acquisition upon the relevant lines of commerce, referred to above, is not determined in accordance with a rigid formula. Guides are furnished in the *Brown Shoe* decision and the cases cited therein. Reference will be made to those which seem to be pertinent here and will be applied to all claimed lines of commerce whether or not allowed as above.

Purpose

The "nature and purpose of the arrangement" is referred to as a most important factor and will first be discussed since it necessarily involves the participants' competitive problems and something of the background of the defendants previously referred to herein.

Alcoa was the prime mover in bringing about the acquisition. Its share in the aluminum market had declined as referred to herein. Its return on invested capital had declined from 9.3% in 1950 to 3.7% in 1961. It admittedly lacked the "know-how" to manufacture the more complicated types of insulated wire and cable for which there was a growing demand. Its principal wire and cable product was ACSR and bare aluminum cable. The need for product diversification was apparent. Rome was known to Alcoa as a substantial organization with special competence in the insulating field. The time required to obtain such competence from within its own organization and the expense involved seemed to foreclose such a program. Rome was first approached and negotiations failed. An engineering company was retained to explore the market to obtain an organization which would furnish the "know-how" in the insulated wire and cable field. Negotiations were reopened with Rome and the acquisition followed. Competition between Rome and Alcoa was limited to four wire and cable products. Rome's production thereof was not significant in amount.

[fol. 4479] All of the above indicates an effort to overcome a market disadvantage rather than to obtain a captive market for its product or to eliminate a competitor. The terms of the contract itself indicates an intention to retain Rome after the acquisition as an active participant in the market which it occupied.

Concentration

Another factor deemed important in providing a factual background for weighing the probable effect of the acquisition is the trend toward concentration in the industry involved. The Government contends that such a trend exists insofar as the aluminum conductor lines of commerce are

involved. In support of the contention, emphasis is placed upon the fact that the combined shares of the market produced by the five integrated producers is roughly averaged at 80%. This fact loses its significance when it is realized that the production of aluminum and the fabricating of its products were concentrated to the point of a monopoly less than twenty years ago and has undergone a gradual decentralization by the entry of new producers and fabricators since that time.

Alcoa has no history of acquisitions or mergers prior to the acquisition of Rome. Alcoa acquired equipment or assets of three other corporations but aluminum wire and cable products were not involved therein and same could in no way contribute to a concentration in that industry.

The Government cites the acquisition by Olin-Mathieson of the Southern Electric Corp. in 1957. The acquisition by Kaiser in the same year of the U. S. Rubber Co. plant at Bristol, R. I. and the acquisition of John A. Roeblings' Sons Co. by Reynolds in 1961 as indicating a merger trend. When examined, the facts hardly support such an indication. Olin-Mathieson manufactured no aluminum wire and cable products prior to its acquisition of Southern U. S. [fol. 4480] Rubber's market share of said products was 0.8% and Roebling's share was never over 0.1% prior to their acquisition by Kaiser and Reynolds as above. More significantly as indicating lack of competitive impact in the product market referred to is the post-acquisition market shares of the above acquiring and acquired companies which show a decline therein as does the Alcoa-Rome market share.

The market situation as to the two principal aluminum conductor lines of commerce can be summarized by stating that as to ACSR and bare aluminum cable, the number of producers of those products increased from Alcoa, alone, in 1940 to twelve such producers in 1950 which number is practically unchanged to date. There were about four producers of insulated wire and cable in 1951 (although government allotments of aluminum for that purpose were issued to eight) and as of April 1, 1961, there were twenty-nine producers of such products.

Ease of Entry

Closely related to the question of trends of or concentration in the aluminum conductor lines of commerce is the question of the existence of barriers to the entry of additional competitors in that particular branch of the industry. This is sometime referred to as the "ease of entry."

The facts already stated above demonstrate that no serious impediment or barrier exists which would bar the entry of producers of wire and cable products. This is accounted for principally for the reason that similar techniques and the same machinery with but slight alterations may be used in the production of such copper and aluminum products. The fact that in ten years the number of producers of insulated wire and cable have risen from four to twenty-nine and most of the new entrants came from the ranks of insulated copper conductor producers is indicative that entry into the aluminum conductor field is dictated by the status of the competition rather than being controlled by actual [fol. 4481] economic barriers. That some companies have ceased making this product is not determinative. "It is competition, not competitors, which the Act protects." The evidence discloses that the withdrawal of certain producers from the production of this item was occasioned by an inability to make a profit and there is no evidence which would indicate that any potential producer has been unable to enter the industry when he thought that a profit could be made therein.

There is no doubt that problems are presented in the matter of the entry of a producer in the ACSR and bare aluminum cable market. The product itself involves specialized techniques and equipment especially in the larger sizes used in the overhead transmission field. In spite of difficulties, there are now twelve such producers, one of whom plans an extension of its facilities. The situation in the industry as to the ease of entry of competitors therein is of course not determinative but is simply another factor to be considered in the appraisal of the problem as a whole.

Market Shares

The market shares which Alcoa and Rome may control by the acquisition is one of the most important factors to be

considered. Since the shares in each line of commerce (whether allowed or not) are discussed in the briefs, they will be set out here and the ultimate conclusions to be drawn therefrom will be found in the detailed findings to be filed in connection with this opinion.

In 1958, the Alcoa and Rome market percentages in the three principal aluminum conductor lines as claimed by plaintiff appear below.

[fol. 4482]

| | Alcoa | Rome |
|-----------------------------------------------------|-------|------|
| ACSR and Aluminum Cable, Bare | 32.5 | 3 |
| Aluminum Wire and Cable, Insulated or Covered | 11.6 | 4.7 |
| Aluminum Conductor Wire and Cable | 27.8 | 1.3 |

The decline in the combined market percentages of Alcoa and Rome in the above products appears below, which shows a generally continued decline therein both pre and post-acquisition.

| | Decline (Percentage Points) | | | | | |
|-----------------------------------------------------|-----------------------------|------|------|---------|---------|---------|
| | 1954 | 1958 | 1961 | 1954-58 | 1958-61 | 1954-61 |
| ACSR and Aluminum Cable, Bare | 48.6 | 32.8 | 26.1 | 15.8 | 6.7 | 22.5 |
| Aluminum Wire and Cable, Insulated or Covered | 16.9 | 10.3 | 4.3 | 6 | 3.3 | 3.9 |
| Aluminum Conductor Wire and Cable | 43.9 | 29.1 | 24.8 | 14.8 | 4.3 | 19.1 |

In 1958 the market percentage of Alcoa and Rome in the four conductor (aluminum and copper) lines of commerce are set out below.

| | Alcoa | Rome |
|--------------------------------------------|-------|------|
| Conductor Wire and Cable | 1.8 | 1.4 |
| Conductor Wire and Cable, Bare | 10.3 | 2 |
| Wire and Cable, Insulated or Covered | 3 | 1.3 |
| Service Drop | 10.8 | 5.1 |

The plaintiff contends that the above percentage table should be increased by the shipments of conductor wire and cable made by the Rea Magnet Wire Co. for 1958. This company was acquired by Alcoa in 1960. Same would seem unimportant from a competitive standpoint since its product was entirely copper wire of small size used principally in coils, transformers, etc. It made no product which competed with Rome. If such products were added, it would [fol. 4483] increase the total of Alcoa and Rome by 1.1%

for conductor wire and cable and 1.3% for wire and cable, insulated, and actually add little or nothing to the significance of the percentages involved.

There is no evidence that the market shares in the conductor lines of commerce have increased or diminished since the acquisition. It would be speculative to assume that the percentages have changed appreciably except perhaps in the case of service drop which is composed principally of aluminum as the conductor and would seem to be included within the insulated or covered aluminum wire line and therefore subject to the post-acquisition decline therein.

In the conduit lines of commerce, no probative preacquisition market data is available. At that time, Alcoa made only aluminum conduit while Rome made only steel conduit. Based upon a survey first made about 1960, Alcoa's share in the conduit market (aluminum and steel) was 3.4% and Rome's share was 3.5%. In aluminum conduit alone, the survey shows that in 1960 Alcoa's market share was 12.0% and Rome's as agent for Alcoa was 14.5%. These later figures should not be construed as showing that Rome in the post-acquisition period actually manufactured aluminum conduit. It had no extruding facilities. The above percentage apparently represents sales of aluminum conduit completely manufactured by Alcoa but sold by Rome as its agent and conduit pipe produced by Alcoa and threaded at the California plant of Rome. The accuracy of the above market shares is seriously questioned by defendants which, together with their incompleteness, afford little, if any, basis for a finding of the effect of the acquisition upon competition in either of the alleged lines of commerce whether or not allowed as such.

The market shares of the defendants in aluminum ingot and rod line of commerce appear to be inconclusive. Rome was not a producer of primary aluminum and did not compete in that market. Rome's purchase of primary aluminum amounted to .2% of the total industry production and [fol. 4484] .3% of Alcoa's production. Rome manufactured its own rod and additionally sold a small amount thereof for conductor use to non-integrated producers of wire and cable. Percentagewise, such sales amounted to a fraction of one percent of the market.

Industry Evidence

In *Brown Shoe*, as in several other reported decisions, industry evidence as to the actual or potential effect of the acquisition upon suppliers and purchasers has been considered as a factor in determining the effect of the acquisition upon suppliers and purchasers. There is an entire absence of such evidence on the part of the Government. The passage of almost three years from the time of acquisition to the time of trial would seem to bring to light the anti-competitive effect of same if in fact it existed. Evidence to the contrary appears in the record. The defendants, through some eight or more witnesses, actively engaged in the aluminum wire and cable industry—all testified without exception that the acquisition has not had an adverse effect upon the purchasers of such products. No difficulty has been encountered in expanding their list of suppliers and that competition among such suppliers has not been affected.

The Dominant Position of Alcoa

Throughout the trial and in the submitted briefs, the Government has taken the position that Alcoa occupies a dominant position in the production of primary aluminum and in the manufacture of aluminum conductor wire and cable products. It is urged that this acquisition has enhanced that position and is therefore a factor in determining the competitive effects thereof. So much reliance is placed thereon that a brief discussion would seem appropriate.

Undoubtedly Alcoa is large in size, both physically and financially. Its activities are varied and extensive. Care [fol. 4485] however must be taken not to exaggerate its influence because of its size alone, especially in the absence of evidence of the abuse of the power which goes with size. *U.S. x. U. S. Steel Corp.*, 251 U. S. 417; *U. S. v. Swift & Co.*, 286 U. S. 106. The mere intrusion of "bigness" into a competitive market will not in itself violate the statute. *Reynolds Metal Co. v. F.T.C.*, 309 F. 2d 223 at 230. Here the Government's contention as to the dominance of Alcoa appears to rest upon size alone without evidence as to the exercise of the power that goes with it. In 1957, Judge Cashin in *U. S. v. Aluminum Company of America*, 153 F. Supp. 132 at 167 found as a fact that Alcoa's relative share

of the aluminum market had declined at that time. That such decline has continued to date appears without contradiction in this case. An increase in the money value of products sold means nothing in the light of the increase in the total market and the decline in the rate of return on Alcoa's invested capital. The increase in the number and market shares of primary aluminum producers and wire and cable producers all point to the conclusion that Alcoa's position in the above markets is something less than dominant. In any event, if Alcoa has the power to dominate, the record fails to show that such power has been used to its own advantage. The position of Alcoa in the above mentioned markets is relevant in this proceeding as a part of the overall picture upon which the decision must be based but this court sees nothing therein from which it could find that such position and the use thereof are indicative of forbidden, anti-competitive practices.

The Competitive Impact

In appraising the impact of the acquisition, we turn first to the relationship between Alcoa and Rome as a source of supply and as direct competitors.

[fol. 4486] The customer-supplier relationship, referred to as the vertical aspect, requires little comment. Rome's purchase from Alcoa of primary aluminum was about 3/10 of one percent of Alcoa's production of that product. This small amount is without significance from a competitive standpoint but indicates rather clearly that the acquisition did not involve the purchase by Alcoa of a captive market.

The market area in which both the acquiring and acquired companies manufactured and sold competing products was limited to four or five items previously mentioned herein. The combination of the manufacturing and selling facilities of the two companies on these items involves the horizontal aspect of the acquisition in its actual and probable effects upon competition.

In ACSR and bare aluminum cable, Rome's pre-acquisition share of the market was 0.3%. In fact, Rome competed only in the smaller sizes of the product while Alcoa manufactured and sold a full line thereof. The products known as covered line wire or weatherproof and multiplex

cable may be discussed together. These products have many end uses but are limited here to "service drop" which has been rejected as a line of commerce. In 1958, Alcoa's share in the service drop market, according to the figures of the Census of Manufacturers was 10.8% and Rome's was 5.1%. These figures do not however include the product known as weatherproof wire, also used as service drop, which was reported under a different classification. Pre-acquisition figures are not available as to the market shares of the defendants in the product known as conduit. During the above time period, Rome manufactured steel conduit, both rigid and thin or electrical metallic tubing (E.M.T.). Alcoa manufactured rigid aluminum conduit and aluminum E.M.T. so that competition between them was in effect the competition between steel and aluminum. The nature and extent of the inter-defendant competition, resulting from the above, may be gathered from the discussion of the market shares of [fol. 4487] the defendants in the conduit lines of commerce as contained herein and needs no repetition here. The same may be said of the item of redraw rod. The extent of the competition therein may also be gathered from the brief discussion herein of market shares of defendants in that item.

Considered only from the manufacturing level, the comparatively small percentages of the market which Rome held in the overlap or competing products would not alone condemn the acquisition especially in view of the purpose and the other relevant factors previously discussed.

The principal contention urged as violative of the statute arises from the premise that the integrated producers are involved in a struggle for monopoly power with the non-integrated producers as their opponents. The argument proceeds to the conclusion that the acquisition adds to the numerical and market strength of the integrated companies especially in the aluminum lines of commerce and is therefore to be condemned.

Without doubt, an integrated company enjoys advantages over its non-integrated competitor. Such advantages would include the ability to sell intermediate products as well as end or fabricated products. Thus at least two opportunities to make a profit are available. They are able to offer a broader line of products to the trade and their sales organ-

izations are likewise given more latitude and sales techniques extended. These advantages are not necessarily conducive to competitive strength in the lines of commerce involved. The financial outlay required, the obtaining and holding of the required skills, the constant research and experimentation, which are required of the seller of intermediate products, are burdens which the fabricator avoids but the integrated producer must carry.

The arraying of the integrated companies on one side and the non-integrated companies on the other overlooks entirely the active and vigorous competition among the integrated companies. In Alcoa's analysis of its lost business [fol. 4488] from 1957 to 1959, it appears that the larger portion of same was lost to integrated producers. Its loss of business to Rome during the same period was insignificant. Previous government action was designed to facilitate the entry of manufacturing competitors of Alcoa's products. Now that such competitors have come into existence, the realities of competition dictate that same may not be ignored or distorted in appraising the competitive market as a whole.

Plaintiff presents statistics tending to show that the market shares of the integrated companies in the aluminum conductor lines of commerce have increased from 1955 to 1959 while the shares of the non-integrated companies have decreased during the same period. This is accounted for principally by the addition of Anaconda and Olin-Mathieson (Ormet) to the list of integrated producers. More significant however is the fact that since the acquisition and up to 1961, the non-integrated companies have held or increased their market shares in the lines under discussion while the shares of the Alcoa-Rome combination have declined. In the ACSR and bare aluminum cable and aluminum conductor wire and cable lines, the non-integrated producers have retained their shares of the market, while the share of Alcoa-Rome in ACSR has dropped from 32.8% to 26.1%. In aluminum conductor, the non-integrated producers have retained their market shares while the share of Alcoa has decreased from 29.1% to 24.8%. In the insulated or covered line of commerce, the non-integrated producers market share has increased from 29.8% to 33.5% while the share of Alcoa-Rome has declined from 16.3% to 13.0%.

The above is proof of what has actually happened in the competitive market. It is a competitive reality much more convincing than arguments based upon speculative future market conditions. When such facts are supported by the oral testimony of utility purchasing agents and non-integrated manufacturers to the effect that the acquisition has not adversely affected their businesses, a finding of a substantial lessening of competition is precluded. The fact that some four or five non-integrated producers have reduced or abandoned their aluminum conductor wire business since 1956 is offset by the entry of at least one new company and increase in their productive facilities by four others. The reduction in or abandonment of the manufacturing of these products were brought about principally by an inability to make a profit therein. This situation tends to confirm rather than to negate the existence of a vigorous competition in the products involved.

The plaintiff advances the argument that the acquisition has eliminated the "potential competition" which would have existed if Rome and Alcoa had separately expanded their facilities so as to include additional aluminum products or increased the production of the overlapping competing products. Like many business concerns, the defendants undoubtedly were constantly reviewing their product lines and exploring the possibilities of expansion. There is no evidence however that either had reached a firm conclusion that such an expansion had or would meet with the necessary approval of those in authority. Expansion from within rather than by acquisition may be preferable from the economist's point of view but the statute makes no such prohibition. The substantial lessening of competition, either actual or probable, is the test.

Considerable discussion is found in plaintiff's brief to the effect that this acquisition increased the problem of a "price squeeze" by the integrated producers or by Alcoa in particular. The discussion proceeds upon the theory that the price of primary aluminum to the fabricators may be so increased that they will be unable to make a profit from sale of the end products. This court does not understand just how the acquisition could affect the problem. Rome was not a primary aluminum producer and its acquisition by Alcoa did not affect either the production or price of that

product. Certainly the fabricator would like to buy his basic material as cheap as possible. This contention ignores the [fol. 4490] competition between primary aluminum producers and seems to assume without evidence to support it that such producers will abandon by an unconscionable pricing arrangement the market for primary aluminum and be content to sell only the end product. This overlooks entirely the present competitive situation among primary aluminum producers, the government required allotment of primary aluminum, and the availability of Canadian and foreign intermediate aluminum products. The argument is purely speculative and without evidence to support it.

Although the above discussion applies particularly to the three alleged aluminum conductor lines of commerce, the factors considered would also apply to aluminum ingot and rod used in the production of aluminum conductor wire and cable and to service drop cable which are urged as proper lines of commerce here by the plaintiff. No separate discussion of the competitive effect of the acquisition upon those two lines of commerce is necessary. While service drop is made with either an aluminum or copper conductor, the aluminum type presently predominates. The ease of entry into the business of manufacturing of service drop and the evidence that the Alcoa-Rome share of the market in insulated or covered aluminum conductor, which includes aluminum conductor service drop, has diminished since the acquisition, in particular prompts the conclusion that the acquisition does not violate the statute insofar as the service drop and aluminum ingot may be involved.

The competitive effect of the acquisition in the three principal conductor (aluminum and copper) lines of commerce is not particularly stressed in the plaintiff's briefs or argument. The market shares of Alcoa and Rome therein are not impressive. Alcoa's higher percentage of the market in conductor wire and cable, bare, is made up of ACSR and bare aluminum cable which comprises all but one-tenth of one percent of its market share. Rome's share in the same item (lacking one-tenth of one percent) is made up of bare conductor copper wire and cable which are not competitive with ACSR as indicated in the discussion of ACSR as an appropriate line of commerce. There is no evidence of post-acquisition trends in the lines now

considered. Likewise there is no evidence that the market, broadened by the inclusion of the competition afforded by the over two-hundred wire and cable producers (both aluminum and copper), will suffer actual or probable anti-competitive effects. There is evidence that such market comprises many strong and vigorous competitors. Alcoa obtained by the acquisition a diversification of its product line by the addition of Rome's copper wire and cable products. Rome however remains as the same source of supply of such products. Considering the same factors discussed herein and applying same to the items presently referred to leads to the conclusion that the statute is not violated as to the three conductor lines of commerce referred to above.

The approach to the consideration of the competitive effect of acquisition upon the conduit lines of commerce is handicapped by the absence of reliable market data. The Brown Shoe case opinion, in referring to the Congressional intent, uses the language "demonstrable anticompetitive effects" as the type of mergers to be invalidated by the statute. Prior to the acquisition, Alcoa manufactured only aluminum conduit, Rome only steel. We have no evidence of the pre-acquisition share of either company in the market. We do have a hesitating and inconclusive estimate of Rome sales in the eleven western states which is rejected as a proper geographic market. The available post-acquisition data lacks the reliability upon which a demonstrable anticompetitive effect may rest. In 1960, the Bureau of the Census compiled figures that defendants' market share of conduit, both steel and aluminum, was 6.9%. This percentage was allocated 3.4% to Alcoa and 3.5% to Rome. The same report attributes the defendants' combined share of aluminum conduit at 26.5%. The above was the first such survey made by the Bureau and forms [fol. 4492] for same were sent only to those who designated themselves as producers of conduit in 1958 and 1959. The evidence shows that at least three aluminum producers entered the conduit field in the 1958-1960 time period.

Again plaintiff appears to stress the status of the defendants in the aluminum conduit line as having anticompetitive effects. Although aluminum conduit has been rejected as a relevant line of commerce here, brief comment will be made relative thereto. Entry to the aluminum con-

duit market requires only an outlay of ten to fifteen thousand dollars by those producers owning extruding equipment. In 1950, there were fifty such owners. The number increased to one hundred and ten in 1955 and to one hundred thirty-three in 1960. The ease of entry is further corroborated by the substantial number of new producers of aluminum conduit in recent years. This is due to the increased demand for the product and provides an active competitive market therein. There is a failure of proof to show that the statute is violated by the acquisition as to either of the conduit lines of commerce as claimed by the plaintiff.

Using the pragmatic practical approach, an appraisal of the acquisition here involved designates same as the combination of an aluminum and an essentially copper manufacturing company. Such an acquisition implies advantages to the acquiring company. Such advantages are not to be condemned unless they portend or approach monopoly proportions. It is the loss to competition rather than the advantage gained that invokes the statute here. Alcoa gained an increase in its scientific knowledge and ability in insulating techniques and a diversification of its line of salable products. This would seem to be a legitimate end in the face of its declining market. There is less need than usual to speculate here upon the effect of the acquisition upon competition. Not only do we have industry evidence as to the actual effect from competitors and purchasers but we also have the factual results of almost three years of market experience. After consideration of all of the evidence offered herein, it is concluded that the acquisition by Alcoa of the capital stock of Rome has not been shown to be in violation of Section 7 of the Clayton Act; that the claim of the complaint has not been established and that same should be dismissed.

This opinion, together with the Findings of Fact and Conclusions of Law, to be filed herewith, will constitute the Findings and Conclusions of this court and judgment is directed accordingly.

So ordered.

Stephen W. Brennan, United States District Judge.

[fol. 4493a] [File endorsement omitted]

[fol. 4499a] UNITED STATES DISTRICT COURT, NORTHERN
DISTRICT OF NEW YORK

Chambers of Judge Stephen W. Brennan

Utica 1, New York

February 21, 1963.

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Re: United States of America vs. Aluminum Co. of America
and Rome Cable Corporation-Civil No. 8030

Dear Sirs:

As you know, the defendants moved under the provisions of 52(b) F.R.C.P. that this court make four additional findings of fact to supplement the findings already filed. I have received the plaintiff's memo in opposition. Same has been considered and it is concluded that the motion should be granted.

Accordingly, I enclose copy of the instrument making the requested additional findings, the original of which was filed in the Clerk's office today.

Additional Finding No. 1 was not opposed by the Government and requires no comment.

Additional Findings Nos. 2 and 3 are opposed by the plaintiff principally because the product line was not found by the court to be a relevant line of commerce. I think the finding should be made for the reason if an appellate court finds that I am in error, as to the line of commerce issue, the findings tend to show facts which would be relevant in determining the effect on competition therein.

[fol. 4499b] I think that additional Finding No. 4 is intended to broaden the holding in the original opinion and decision to the determination that aluminum conductor wire and cable is not a line of commerce considered as either a "broad line or submarket line." The opinion and findings, as originally made, seem to limit the consideration of the product as a broad line. I am in entire agreement that the item cannot be found as a narrow or submarket line and I am making the finding for the purpose of settling that question.

Very truly yours, Stephen W. Brennan, U.S. District Judge.

SWB/ec, encl.

[fol. 4500] IN UNITED STATES DISTRICT COURT, NORTHERN
DISTRICT OF NEW YORK.

Civil No. 8030

UNITED STATES OF AMERICA, Plaintiff,

v.

ALUMINUM COMPANY OF AMERICA AND ROME CABLE
CORPORATION, Defendants.

ADDITIONAL FINDINGS OF FACT--February 21, 1963

Pursuant to a motion made by the defendants under the provisions of 52(b) Federal Rules of Civil Procedure, the court makes the additional Findings of Fact which are set out below, same to be considered as supplemental to the Findings and Conclusions previously filed.

1. Because of the closer manufacturing controls required, E. C. grade aluminum, like other alloys, is sold at a premium; however, the price of E. C. aluminum ingot changes directly and correspondingly with the basic price of aluminum ingot.

2. In 1956, the year of Rome's greatest primary aluminum purchases, such purchases amounted to less than 7/10 of 1 percent of total primary aluminum sold to non-integrated fabricators.

3. In view of the ability of aluminum producers to make E. C. and other types and alloys of aluminum interchangeably in accordance with orders received, there is no basis for an inference that other producers will be foreclosed from a substantial market for primary aluminum as a result of Alcoa's acquisition of Rome.

4. Item 1, aluminum conductor wire and cable, excludes insulated copper products and therefore does not include all wire and cable products for which there is reasonable interchangeability of use or cross-elasticity of demand. In addition, the evidence fails to establish that the combination of [fol. 4501] bare and insulated aluminum wire and cable, considered as a whole, is generally recognized in the industry as a separate economic entity or submarket; nor, in

view of facts found with respect to Item 3, insulated or covered aluminum wire and cable (Findings 25 to 29, inclusive; Opinion pp. 14-15) does the evidence establish that aluminum conductor wire and cable, including both bare and insulated products, has competitively significant peculiar characteristics and uses, is made on unique production facilities, or is sold by specialized vendors to a distinct class of customers.

Stephen W. Brennan, United States District Judge.

Dated: February 21, 1963.

[fol. 4501a] [File endorsement omitted]

[fol. 4502] IN UNITED STATES DISTRICT COURT, NORTHERN
DISTRICT OF NEW YORK

Civil No. 8030

UNITED STATES OF AMERICA, Plaintiff,

v.

ALUMINUM COMPANY OF AMERICA AND ROME CABLE
CORPORATION, Defendants.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED
STATES—Filed March 29, 1963

I. Notice is hereby given that the United States of America, the plaintiffs above named, hereby appeals to the Supreme Court of the United States from the final judgment entered in this action on January 28, 1963 dismissing this action. This appeal is taken pursuant to Section 2 of the Expediting Act, 32 Stat. 823, as amended, 15 U.S.C. 29.

II. The Clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States, and include therein the entire record before the district court including all

papers filed with the Clerk of the Court in this proceeding, the transcript of the trial proceedings, all exhibits and proposed findings submitted by the parties, and this Notice of Appeal.

III. The question presented by this appeal is whether the acquisition by the Aluminum Company of America of the capital stock and assets of Rome Cable Corporation violated Section 7 of the Clayton Act.

/s./ Robert B. Hummel, Attorney, Department of
Justice. /s./ Justin J. Mahoney, United States
Attorney, New Federal Building, Albany, New
York.

[fol. 4503] Certificate of Service omitted in printing.

[fol. 4503a] [File endorsement omitted.]

[fol. 4504] Clerk's Certificate to foregoing transcript
omitted in printing.

7

[fol. 4503] IN UNITED STATES DISTRICT COURT

PLAINTIFF'S EXHIBIT 3

Aluminum Company of America

Pittsburgh 19, Pa.

April 2, 1959.

Leon E. Hickman,
Vice President
& General Counsel
Victor R. Hansen, Esquire,
Assistant Attorney General,
Antitrust Division,
United States Department of Justice,
Washington, D. C.

Dear Judge Hansen:

I hand you herewith a loose leaf notebook containing most of the data requested in your letters of February 2nd addressed to Alcoa and Rome Cable Coporation concerning the acquisition of the assets of Rome by Alcoa. The two companies are submitting this single reply because your letters make the same requests of both and ask each for data which can only be supplied by the other. A word of explanation as to the omissions:

Rome is in the electrical conductor business. Alcoa is in the aluminum business on a fully integrated basis, from foreign bauxite and steamships to automobile pistons, building panels and cooking utensils, to mention only five of hundreds of items covered by your questions but which have nothing to do with the electrical conductor business. To spare ourselves a task which would have required months of effort on the part of a great many people and to save you the chore of sorting relevant from irrelevant data, we have taken the liberty of limiting your questions, insofar as they apply to Alcoa, to electrical conductor products and those products which underlie them. This limitation has been applied specifically in answering your questions numbered 9, 10, 11, 17 and 21.

For the same reason Alcoa's response to questions 6, 7 and 8 has been limited to companies, plants and products which are concerned with electrical conductor products or a product underlying them.

[fol. 4506] In answering the first question we did not include congratulatory personal letters between officials at the time of the Alcoa-Rome agreement or the correspondence since the agreement relating to the mechanics of transferring the Rome properties to Alcoa.

I believe we have supplied you all the information which is relevant to the questions raised by your letter. If you need further data, we shall do our best to be cooperative.

With cordial regards, I am

Sincerely, Leon E. Hickman, Vice President & General Counsel.

LEH/im: Enclosure
Held by A.T.

[fol. 4507] IN UNITED STATES DISTRICT COURT

PLAINTIFF'S EXHIBIT 5

Aluminum Company of America
Pittsburgh 19, Pa.

January 21, 1959.

Frank L. Magee,
President
Rome Cable Corporation,
Rome,
New York.

Gentlemen:

Aluminum Company of America (Alcoa) offers to acquire from Rome Cable Corporation (Rome) all the assets, properties, contract rights, business and good will of Rome (herein collectively called assets), of every kind and description and wherever located, for a consideration of 355,226

shares of common stock of Alcoa and the assumption by Alcoa of all debts, obligations, liabilities and contract duties of Rome (herein collectively called liabilities). The transaction we propose would be an acquisition of assets for stock and not a statutory merger or consolidation.

We are agreeable to having the transaction effected in such a way as to be a non-taxable reorganization under the provisions of the United States Internal Revenue Code, and, if you request, would condition any agreement resulting from acceptance of this offer upon your obtaining a favorable ruling from the Internal Revenue Service in this respect.

The obligation of Alcoa arising out of acceptance of this offer shall be subject to the conditions that Rome shall have taken all such corporate action as shall be necessary for the performance of its obligations thus arising; that Rome have good and marketable title to all the assets which it purports to transfer and that such assets are subsisting on the day of closing; that Rome shall not have incurred any obligations, disposed of any assets or engaged in any transactions after March 31, 1958, other than in the ordinary course of business; that, except for liabilities incurred in the ordinary course of business after March 31, 1958, there shall be no liabilities other than such as are shown on the published balance sheet of Rome as of March 31, 1958; and that, as of the day of closing, there shall have been no change in the condition of Rome, financial or otherwise, as shown in the said balance sheet as of March 31, 1958, other than changes which occurred in the ordinary course of business and did not have a material adverse effect on Rome's business, properties or financial condition.

[fol. 4508] The obligation of Rome arising out of acceptance of this offer shall be subject to the conditions that the shares of common stock of Alcoa to be acquired by Rome shall be validly issued and that, as of the day of closing, there shall have been no change in the condition of Alcoa, financial or otherwise, as shown in its published balance sheet as of December 31, 1958, other than (1) changes which occurred in the ordinary course of business and (2) changes which occurred outside the ordinary course of business but did not have a material adverse effect on Alcoa's business, properties or financial condition.

The agreement to be executed by Alcoa and Rome, if this offer is accepted, shall contain such other and further terms, provisions, conditions and warranties as are normally contained in such agreements.

This offer, which is made by authority of the Executive Committee of the Board of Directors of Alcoa, is open for acceptance on or before January 31, 1959, and may be accepted by the signing and returning of the enclosed duplicate copy of this letter.

Very truly yours, Aluminum Company of America,
By Frank L. Magee, President.

The foregoing offer is accepted this 22nd day of January, 1959.

Rome Cable Corporation, By /s/ A. D. Ross Fraser,
President.

[fol. 4509] IN UNITED STATES DISTRICT COURT

PLAINTIFF'S EXHIBIT 6

Aluminum Company of America

January 21, 1959.

Mr. A. D. Ross Fraser,
President,
Rome Cable Corporation,
Rome, New York.

Dear Ross:

If the directors and shareholders of Rome Cable Corporation approve the sale of your company to Alcoa, the most challenging opportunity confronting us both is how to consolidate personnel to the best advantage. When we were last together, we spent more time on that than any other matter. We have continued to give it a priority in our thinking because, above all else, we want to maintain the high esprit de corps of the Rome organization and to open to every man and woman in your organization improved op-

portunities under the new program. Our thinking runs along the following lines:

(1) *All manufacturing and selling activities of Rome Cable Corporation conducted at Rome, New York, will be continued in that location.*

(2) *A new corporation, to be known as Rome Cable Company, will be formed to take over the properties of the present Rome company. Its Board of Directors would necessarily consist of a small number of Rome and Alcoa officers selected with an eye to functional coordination of activities. You and the present officers of Rome Cable Corporation will be expected to hold the same offices in the new company as you hold in the old, subject only to such changes as time and changing circumstances indicate would be in our common interest. Likewise, the rest of your organization will be carried over intact into the new company. Initial salaries in the new company would be the same as in the old, subject to such adjustments as joint study indicates to be equitable. Alcoa employee benefits will be made available to Rome employees as promptly as they qualify, as we discussed in some detail when you were in Pittsburgh.*

[fol. 4510] (3) *We would expect to consolidate in the new company all electrical wire, cable and conduit activities of both Rome and Alcoa. This will greatly expand the scope of activity, and, consequently, the responsibility and opportunity of the Rome organization. For example, the transfer to it of Alcoa's bare conductor business alone will greatly enlarge its operations. We would expect to move into the new company additional products in the electrical conductor field or related areas as we gain experience in working together. Insofar as products new to Rome are moved into its orbit, it will probably be advisable to transfer experienced Alcoa personnel to the Rome operation.*

(4) *The new company will operate functionally as a Division of Alcoa. In addition to full responsibility for products manufactured directly by it, it will have a functional responsibility for such Alcoa products as are manufactured, through the existing Alcoa organization, in Alcoa plants but sold by the Rome organization. Quite possibly, the activities of the new company will subdivide into five*

categories: (a) insulated wire, (b) bare conductor, (c) accessories, (d) conduit, and (e) Cope.

(5) *We would expect the new company to continue the present sales organization of Rome, subject only to such modifications as experience might indicate to be in the common interest.* Insofar as Rome selling activity is expanded by merchandising Alcoa products, experienced Alcoa personnel will be available for transfer to the Rome Company. We regard the effective consolidation of the marketing organization of the two companies as one of our major problems if we are to gain the full benefit of our proposed agreement. However, we are certain that this can be achieved, as our Pittsburgh discussions indicated.

(6) *Purchasing.* We would expect the purchasing activities of the new company, particularly in copper and steel for conduit, to be handled through its own organization, but in coordination with Alcoa's purchases in the same or related fields.

(7) *Research.* Both Rome and Alcoa are research-minded. We would expect the new company to continue the Rome Research Center in Rome, but to greatly expand its usefulness by coordinating its programs with the research staff of Alcoa.

(8) *Modifications in the light of experience.* I am sure you realize that while we speak in complete candor and good faith, these policies must always be subject to modification or change as experience may dictate. A rigid commitment on these points would be no more in your interest than ours; [fol. 4511] for example, tax considerations may ultimately make it advisable to liquidate the new company into Alcoa and, thereafter, operate it as one of the Divisions of Alcoa. Some of your people are quite likely to find additional opportunities for advancement in the Alcoa organization. No decision can be reached now as to where it would be advisable to manufacture new products or additional production of existing products.

There is an element of faith in this, as in all worthwhile matters. We are counting on your people, strengthened by the support that Alcoa can give them,^o to develop the wire and cable business of Rome well beyond its present poten-

tial. We can go far together if we maintain a mutual confidence and a willingness to adapt our program to changing circumstances. Subject only to those inevitable contingencies, this letter expresses our full thinking to date.

With cordial regards, I am

Sincerely, /s/ Frank L. Magee, President

FLM:frl

[fol. 4512] IN UNITED STATES DISTRICT COURT

PLAINTIFF'S EXHIBIT 7

Rome, New York—January 22, 1959.

WESTERN UNION

W. P. Marshall, President

Rome Cable Corporation and Aluminum Company of America today announced plans to affiliate.

Frank L. Magee, President of ALCOA and A. D. Ross Fraser, President of Rome Cable, announce that agreement had been reached on a plan by which ALCOA will acquire all the properties of Rome Cable for 355,226 shares of ALCOA common stock. This will permit distribution to Rome shareholders of 3 shares of ALCOA common stock on each 5 shares of Rome common stock. The agreement is contingent upon the approval of Rome Shareholders who will meet on March 25, 1959. If approved, it will take effect immediately.

ALCOA and Rome plan to combine their electrical conductor, conduit and accessory activities in a new company to be called Rome Cable Company. The present members of Rome's management will continue in their present capacities in the newly formed company. Mr. H. T. Dyett will retire as Chairman of the Board of Rome Cable, when and if the agreement is consummated, rather than at the Annual Meeting in June as previously planned, but he will serve on the Board of Directors of the new company.

ALCOA plans to continue the fundamental policies established by the Rome management, and no major changes in personnel or operating procedures are anticipated.

Rome Cable Corporation shares currently are listed on the New York Stock Exchange. The company has approximately 2500 share holders. Rome Cable's net sales for the year ending March 31, 1958 amounted to \$40,615,000. Annual sales have averaged \$47,000,000 over the past five years. The company has approximately 1500 employees. It operates manufacturing plants at Rome, New York, Torrance, California, and Collegeville, Pa., as well as sales offices in principal cities of the United States. Rome is best known for its broad line of quality insulated wire and cable products—chiefly made of copper—and steel conduit and other wiring systems. Its products are sold to electric utilities, electrical manufacturers, other wire fabricators, industrial users, wholesalers, mines and oil companies. A number of specialty products are made for the military services, especially for use in the missile program.

Rome Cable was founded twenty-three years ago and has grown rapidly during that time. It is well known in the electrical industry for the emphasis it has placed on research and development activities. During 1958 the company opened a new research center at Rome, New York in order to stimulate further progress in the development of new products and new and improved manufacturing processes and practices. Nearly 40 per cent of the company's sales during the year ending March 31, 1958 came from items that Rome did not manufacture prior to 1950.

[fol. 4513] For more than sixty years ALCOA has pioneered the development of aluminum as an electrical conductor. It produces aluminum wire and cable, bus conductors, conductor accessories, conduit and windings of aluminum sheet and foil for electrical transformers and condensers. One of the company's research laboratories is devoted exclusively to the development of new products and processes for the electrical conductor industry.

"Our proposed affiliation with ALCOA", Mr. Fraser said, "is very much in the best interests of Rome's employees, share owners and customers. It will make possible more complete service to customers by taking advantage of

the combined production and marketing of ALCOA's line of aluminum conductor products as well as bare and insulated wire and cable products produced by Rome. The coordinated research and development activities of Rome and ALCOA will provide improved services to the electrical industry."

"The plan that will be submitted to Rome's shareholders", Mr. Magee said, "will make possible greatly improved service to the rapidly growing electrical industry. For many years Alcoa has specialized in the production and sale of bare aluminum conductors with emphasis on the popular aluminum cable steel reinforced (ACSR) for electrical transmission and distribution lines. More recently Alcoa has been offering a limited line of insulated aluminum conductors. Rome Cable's complete facilities for the production and sale of many types of insulated wire and cable as well as bare copper conductors will fully complement Alcoa's facilities and enable the new organization to meet the increasingly complex requirements of the electrical industry."

Pacific Coast Stock Exchange, 301 Pine Street, San Francisco 4, Calif. Mr. Thomas P. Phelan, Exec. V.P., Pacific Coast Stock Exchange, 618 South Spring Street, Los Angeles, Calif.

Mr. James R. Leedham, New York Stock Exchange, Department of Stock List, 11 Wall Street, New York, New York. Dow Jones & Co. Inc., 44 Broad Street, New York, New York.

[fol. 4514] IN UNITED STATES DISTRICT COURT

PLAINTIFF'S EXHIBIT 8

Rome Cable Corporation, Rome, N. Y.

January 23, 1959.

Telephone statement by A. D. R. Fraser, President of Rome Cable Corporation to Mr. Paul Windels, Jr. the Regional Administrator of Securities Exchange Commission—New York

On October 20, 1958 in the course of a regular business call on Mr. Ralph V. Davies, Vice President and Director of the Aluminum Company of America, Pittsburgh, Pa., I was asked the question if we were interested in an affiliation with ALCOA, and if so if we would set a price. I stated I would check with Mr. H. T. Dyett, Chairman of the Board of Rome Cable. As a result, Mr. H. T. Dyett, Chairman of the Board, J. H. Dyett, Executive Vice President and I, A. D. Ross Fraser, President of Rome Cable met in New York on October 29, 1958, with Mr. R. V. Davies and Mr. L. E. Hickman, both Vice Presidents and Directors of ALCOA. At that time we indicated that the matter had not been discussed with our Board, and a figure was given to Messrs. Davies and Hickman.

On Friday, October 31, 1958 Mr. Davies called Mr. H. T. Dyett and stated that our proposed figure was too high. Mr. H. T. Dyett stated that in view of the fact that the matter had not been submitted to the Board of Directors of Rome Cable, and in fairness to share owners of Rome Cable, would ALCOA indicate a figure which they felt was more satisfactory.

No meetings or negotiations of any sort were held until Wednesday, January 14, 1959 in Pittsburgh, Pa., at which time Messrs. I. W. Wilson, Chairman of ALCOA, Frank L. Magee, President, Ralph V. Davies, Vice President, Leon E. Hickman, Vice President, all four of whom are Directors of ALCOA and Philip T. Coffin, Manager Electrical Industry Sales, met with John H. Dyett, Executive Vice President, Gerard A. Weiss, Secretary and me, A. D. Ross Fraser,

President of Rome Cable Corporation. This conversation resulted in ALCOA making a verbal offer to Rome Cable Corporation on that day of buying the assets for a total of 355,226 shares of ALCOA Common Stock. Written proposal from ALCOA did not reach us in Rome until Tuesday, January 20, 1959. Favorable action on the proposal was taken by the Board of Directors of Rome Cable during the morning of January 22, 1959.

/s/ A. D. R. Fraser, President.

[fol. 4515] IN UNITED STATES DISTRICT COURT

PLAINTIFF'S EXHIBIT 9

Rome Cable Corporation

No.

Proxy for Special Meeting of Share Owners

Know all men by these presents, that the undersigned, a holder of Common Stock of Rome Cable Corporation, hereby constitutes and appoints Harry W. Barnard, Herbert T. Dyett, and A. D. Ross Fraser, and each or any of them, with power of substitution, and in place of each, in case of substitution, his substitute, the attorneys, agents and proxies for and in the name, place and stead of the undersigned, to attend at the special meeting of the holders of Common Stock of said Corporation to be held at the office of said Corporation, 421 Ridge Street, Rome, New York, on Wednesday, March 25, 1959, at 10:00 o'clock A. M., and at any and all adjournments thereof, and to cast the number of votes the undersigned would be entitled to vote.

(a) In favor of ☐

Against ☐

approving and ratifying the Plan and Agreement, dated February 17, 1959, entered into by Rome Cable Corporation and Aluminum Company of America and Authorizing the taking of all necessary or convenient and proper steps, in-

cluding without limitation the filing of appropriate certificates with the Secretary of State of the State of New York, to effectuate said Plan and Agreement, all as set forth in the notice of special meeting, dated March 3, 1959, and in the proxy statement accompanying said notice, copies of which have been received by the undersigned; and

The Board of Directors Recommends a Vote in Favor of the Proposed Plan.

(b) upon any and all other business that may lawfully come before the meeting,

hereby revoking any proxy heretofore given designating others to act in respect of the same shares.

This Proxy is to be Voted in Favor of the Proposal Referred to in Clause (a) Above, Unless the Undersigned Has Indicated a Direction for a Contrary Vote by His Mark Placed in the Brackets Following the Word "Against", in Which Event This Proxy Shall be Voted Accordingly.

A majority of said attorneys, agents and proxies, or their substitutes, who shall be present and act at the meeting (or, if only one should be present and act, then that one) shall have and may exercise all the powers hereby conferred.

This proxy delegates discretionary authority in respect of all matters which may come before the meeting, not known or determined at the time of mailing the notice of meeting.

In Witness Whereof, the undersigned has executed this instrument this — day of March, 1959.

Please make the signature or signatures on this proxy conform with names stencilled hereon.

If shares are held in joint names, please sign this proxy with the names of both owners.

When signing as Attorney, Executor, Administrator, Custodian or Guardian, please give your full title as such.

Note: Stockholders who do not expect to attend the meeting are requested to fill in, sign and return promptly, this Proxy, which is solicited on behalf of the Management of the Corporation. Please use the post-paid envelope enclosed for your convenience.

[fol. 4516]

Rome Cable Corporation,
Rome, N. Y.

To Our Share Owners:

It was announced on January 22, 1959 that the Board of Directors of your Company had unanimously voted to refer to share owners an offer from Aluminum Company of America (Alcoa) to acquire all the assets of Rome Cable for 355,226 shares of Alcoa common stock.

There is enclosed with this letter a Notice of a Special Meeting of Share Owners, to be held March 25, 1959, together with a Proxy and a Proxy Statement. An affirmative vote of share owners representing two-thirds of the outstanding common stock of Rome is required to approve the purchase agreement. The vote of every share owner is important. Therefore, if you do not expect to be able to attend the special meeting please sign and return the enclosed proxy in time to reach us prior to March 25, 1959.

Alcoa is the country's largest and oldest producer of aluminum and aluminum products. It is fully integrated. More than sixty years ago Alcoa pioneered in the use of aluminum as an electrical conductor and ever since that time has been active in the development of new aluminum products and processes for the electrical industry. Within this field Alcoa today specializes in the manufacture of bare steel reinforced aluminum cable for electrical transmission lines.

On the other hand, your Company has specialized in the manufacture of copper wire and cable for a wide variety of uses. It was also one of the pioneers in the production of insulated aluminum conductor.

The management of Rome Cable has given the most careful consideration to Alcoa's offer and is strongly of the opinion that acceptance of this offer is in the best interest of the share owners of Rome Cable. The enclosed Proxy Statement gives you detailed financial information on each company and also a summary of the ranges of the prices of common stock of each company during 1957 and 1958 and for the first two months of 1959. If the share owners accept Alcoa's offer, you acquire stock in a diversified fully integrated aluminum producer.

Alcoa proposes to operate the Rome properties through

a new Company which will headquarter in Rome and will bear that name. This new Company, led by Rome's present management and combining Rome's experience in copper with Alcoa's know-how in aluminum, will be in a position to serve the fast growing electrical industry more comprehensively than either of the two companies can do today. Both Alcoa and Rome are research minded; we believe the coordination of Rome and Alcoa research and development activities in the electrical field will lead to the creation of new products for and improved services to electrical product users.

If the agreement is approved, Rome's share owners will receive six-tenths (6/10) of a share of Alcoa common stock for each share of Rome common stock as soon after share owners' approval as the transaction can be consummated.

Your management urges you to vote *in favor of* the proposals to be considered at the special meeting of share owners and to sign and send in your proxy promptly, if you are unable to attend the special meeting in person.

By Order of the Board of Directors, Rome Cable Corporation, H. T. Dyett, Chairman of the Board,
A. D. R. Fraser, President.

March 3, 1959

[fol. 4517] Rome Cable Corporation

Notice of Special Meeting of Share Owners to be Held
March 25, 1959

Notice is Hereby Given that a Special Meeting of Share Owners of Rome Cable Corporation will be held at the office of the Corporation, 421 Ridge Street, Rome, New York on Wednesday, March 25, 1959 at 10:00 A. M., Eastern Standard Time, for the following purposes:

- (1) To consider and, if deemed advisable, to approve and ratify a certain Plan and Agreement dated February 17, 1959 entered into by Rome Cable Corporation and Aluminum Company of America and, for the purpose of effectuating such Plan and Agreement and in accordance with the provisions thereof:

(a) To authorize the transfer of all or substantially all of the assets of Rome Cable Corporation to Aluminum Company of America or a wholly-owned subsidiary of Aluminum Company of America for such number of shares of common stock of Aluminum Company of America as shall be equal to six-tenths (6/10) of the number of shares of common stock of Rome Cable Corporation outstanding at the time of such transfer (and within three months thereafter by virtue of the exercise of certain options to purchase common stock of Rome Cable Corporation) and the assumption by Aluminum Company of America or by such subsidiary of Aluminum Company of America of the liabilities of Rome Cable Corporation;

(b) To authorize and consent to, subject to effecting such transfer, the dissolution of the Corporation in accordance with the provisions of Article 10 of the Stock Corporation Law of the State of New York and the distribution to the share owners of Rome Cable Corporation, in complete liquidation thereof, of the shares of common stock of Aluminum Company of America, received upon such transfer, upon the basis of six-tenths (6/10) of a share of Aluminum Company of America for each share of Rome Cable Corporation;

(c) To authorize the amendment of the Certificate of Incorporation of Rome Cable Corporation so as to change the corporate name to "RTC Liquidating Corporation"; and

(d) To authorize any and all other action necessary or desirable and proper to carry out such Plan and Agreement and effectuate the purposes thereof.

(2) To transact such other business as many properly come before the meeting or any adjournment thereof.

A copy of said Plan and Agreement is included in the Proxy Statement annexed to this Notice.

The Board of Directors has fixed the close of business on

February 27, 1959 as the record date for the determination of share owners of the Company entitled to notice of, and to vote at, the meeting.

By order of the Board of Directors, Gerard A. Weiss,
Secretary.

March 3, 1959

Note: Share owners who do not expect to attend the meeting are requested to fill in, date, sign and return promptly, the accompanying Proxy, *which is solicited on behalf of the Management of the Corporation.* Please use the post-paid envelope enclosed for your convenience.

[fol. 4518] Rome Cable Corporation

Proxy Statement for Special Meeting of Share Owners to be
Held March 25, 1959

This statement is furnished in connection with the solicitation of proxies by the management of Rome Cable Corporation (hereinafter sometimes called Rome, Rome Cable or the Corporation) to be voted at a Special Meeting of Share Owners of the Corporation to be held on Wednesday, March 25, 1959, and at any and all adjournments thereof, at the office of the Corporation, 421 Ridge Street, Rome, New York, for the purposes set forth in the accompanying Notice of Special Meeting of Share Owners dated March 3, 1959. A proxy in the form submitted herewith may be revoked by the person giving it at any time before its exercise.

The shares represented by the proxies received and not revoked will be voted in accordance with the specifications made on such proxies, or in the absence of specific instructions, they will be voted in favor of the proposed Plan and Agreement.

The Proposed Plan and Agreement

The Special Meeting of the Share Owners has been called to consider and take action upon a proposed Plan and Agreement (hereinafter called the Plan) between the Corporation and Aluminum Company of America (hereinafter some-

times called Alcoa or the Company) which contemplates the transfer by the Corporation of all or substantially all of its assets to a wholly-owned subsidiary (hereinafter referred to as Subsidiary) of Alcoa or to Alcoa in exchange for shares of common stock of Alcoa equal in number to six-tenths (6/10) of the shares of the Corporation's common stock outstanding at the time of such transfer (or within three months thereafter by virtue of the exercise of options to purchase shares of common stock of the Corporation) and the assumption by the Subsidiary or by Alcoa of the Corporation's liabilities, the subsequent dissolution of the Corporation and the distribution of such shares of Alcoa common stock to the Corporation's share owners in complete liquidation, on the basis of six-tenths (6/10) of a share of Alcoa common stock for each share of the Corporation's common stock.

A copy of the Plan is annexed hereto as Exhibit A. Any summaries contained in this Proxy Statement of any of the provisions of the Plan do not purport to be complete statements of such provisions and are qualified in their entirety by reference to such Exhibit.

The Plan provides that its consummation is subject to certain conditions, including the receipt of opinions of counsel with respect to various legal matters, and there having been, prior to closing, no changes in the condition of the Corporation, financial or otherwise, as shown in its balance sheet as of March 31, 1958, other than changes which occurred in the ordinary course of business, and none of such changes (other than as reflected in the Corporation's balance sheet as of December 31, 1958) having had a material adverse effect on the Corporation's financial condition, results of its operations or its properties, and there having been, prior to closing, no changes in the condition of Alcoa, financial or otherwise, as shown in its balance sheet as of December 31, 1958, other than (i) changes which occurred in the ordinary course of business, and (ii) changes which occurred outside the ordinary course of business but did not have a material adverse effect on Alcoa's financial condition, results of its operations or properties.

The Plan contemplates that the transfer of the Corporation's assets in exchange for stock of Alcoa will take place on March 31, 1959, if approved by the share owners of the

Corporation. However, under the terms of the Plan, either the Corporation or Alcoa may postpone the closing to a date not later than April 30, 1959. Alcoa and the Corporation, by mutual consent, may postpone the Closing Date beyond April 30, 1959. If, by mutual agreement of Alcoa and the Corporation, the period within which the closing may be held is extended beyond April 30, 1959, the shareholders of the Corporation may direct the termination of the Plan by the affirmative vote of holders of record of a majority of the outstanding shares of the Corporation represented and voting at any annual meeting of shareholders of the Corporation held after December 31, 1959, if the period of such [fol. 4519] extension has not expired or the closing shall not have been held prior to the date of such annual meeting. By mutual consent, the Boards of Directors or the Executive Committees of Alcoa and the Corporation may terminate the Plan at any time and may amend or modify the Plan; provided, however, that no such amendment or modification shall change the number of shares of common stock of Alcoa to be delivered to the Corporation under the Plan or make any material change in the provisions of the Plan relating to the transfer of the Corporation's assets to and the assumption of its liabilities by the Subsidiary and the distribution to the Corporation's shareholders of such shares of common stock of Alcoa against surrender by such shareholders for cancellation of their certificates for outstanding shares of common stock of the Corporation, or alter the shareholders' right to terminate the Plan as provided therein.

In determining that the proposal and the consideration offered to Rome by Alcoa were fair and should be submitted to Rome stockholders the Board of Directors of Rome took into account, among other things, the financial records of Rome and Alcoa (including earnings, dividends and book values), the anticipated potentials of each Company with respect to the future, the increasing importance of aluminum to the electrical industry, and the relative market values of the shares of both companies.

There are and have been no material relationships between the Corporation or any of its officers or directors on the one hand and Alcoa or any of its officers or directors on the other hand other than normal relationships of buyer and

seller of products and services. Alcoa is a partial supplier of aluminum pig to the Corporation. Total purchases of aluminum pig represent approximately 3% of the Corporation's total purchases of raw materials. The Corporation performs certain services for Alcoa with respect to the covering of aluminum wire and cable, the revenue from which in 1958 constituted about 2% of the Corporation's gross sales.

The management recommends that the share owners vote in favor of the Plan, for the reasons given above and for the reasons given in the letter from Mr. H. T. Dyett, Chairman of the Board of the Corporation and Mr. A. D. R. Fraser, President of the Corporation, which letter accompanies this proxy statement and in which the Board of Directors concurs.

The Assistant Attorney General in charge of the Anti-trust Division of the United States Department of Justice has requested information from both the Corporation and Alcoa concerning the proposed transactions, the plants and products of both companies and other matters. In the letters requesting this information it was stated that while the proposed transaction does raise certain questions under the Antitrust Laws, the letter was not meant to imply that there would necessarily be a violation of such laws.

Promptly after the transfer of the Corporation's assets, notice thereof will be mailed to share owners of the Corporation, accompanied by instructions with respect to the surrender of their certificates for shares of stock of the Corporation in exchange for certificates for shares of common stock of Alcoa.

Fractional Interests

In the distribution of Alcoa common stock upon the liquidation of the Corporation no fractional shares will be issued, but arrangements will be made with an exchange agent so that for a period of 120 days after the effective date of the transfer of the Corporation's assets, a holder of certificates for shares of stock of the Corporation who would otherwise be entitled to a fractional share, may, upon surrender of his certificate or certificates of common stock of the Corporation, give instruction to the exchange agent to purchase the

additional fractional share required to make up a full share or to sell the fractional share to which he is entitled. If no instruction for the purchase or sale of a fractional interest is given upon surrender of the certificate for shares of stock of the Corporation, the exchange agent will sell any such fractional interest for the account of the holder thereof.

After the expiration of the 120 day period the exchange agent, as agent for all share owners of the Corporation who are, according to the stock transfer books and records of Rome as of the close of business on the day of the expiration of such period, entitled to a fractional interest in any share of Alcoa common stock, will sell shares of Alcoa common stock equivalent to the aggregate of fractional share interests of such share owners. Thereafter such share owners will, to the extent that they have any rights with respect to fractional shares of common stock of Alcoa, be entitled only to their proportionate share of the net proceeds realized by the exchange agent in the aforesaid sale of shares of common stock of Alcoa.

[fol. 4520]

Federal Tax Status

Counsel to the Corporation have advised the Corporation that in their opinion no gain or loss for Federal income tax purposes will be recognized to the Corporation upon consummation of the transactions provided for in the Plan, or to the share owners of the Corporation upon the distribution to them, in liquidation, of whole shares of common stock of Alcoa as contemplated by the Plan; but that, in the case of holders of common stock of Rome Cable Corporation who sell fractional interests in shares of common stock of Alcoa, gain or loss will be recognized for Federal income tax purposes. A ruling to this effect, based upon the assumption that the Subsidiary will acquire the assets of the Corporation directly from the Corporation, has been received from the Office of the Commissioner of Internal Revenue (U. S. Treasury Department). A ruling to the same effect, based upon the assumption that Alcoa elects, pursuant to its right under Section 5.4 of the Plan, to acquire the assets of the Corporation and to transfer them thereafter to the Subsidiary, has been requested from the Office of the Commissioner of Internal Revenue (U. S. Treasury Department).

Voting Securities and Vote Required

The only outstanding voting securities of the Corporation as of February 27, 1959, consisted of 561,802 shares of Common Stock, each share of which entitles the holder to one vote. Since the Plan contemplates the transfer of substantially all of the Corporation's assets and the dissolution of the Corporation, the approval of the Plan requires, under New York law, the affirmative vote of holders of record of two-thirds of the outstanding shares of the Corporation entitled to vote thereon.

Common Stock of Rome Cable Corporation

Dividend rights

The holders of common stock are entitled to such dividends as the Board of Directors may determine to pay out of funds available therefor, subject, however, to the limitations imposed by the promissory notes from the Corporation to The Connecticut Mutual Life Insurance Company, Massachusetts Mutual Life Insurance Company and J. P. Morgan & Co. Incorporated, dated as of July 25, 1957. As of December 31, 1958 the amount so available was \$2,052,000. See note C of the Notes to the Corporation's Financial Statements, p. 28.

Voting rights

Each share of common stock has one vote.

Liquidation rights

After creditors have been satisfied, the common stock is entitled to the balance of the assets.

Preemptive rights

Except as otherwise provided by statute and except with respect to the issuance of shares covered by the Corporation's stock option plan (See caption "Stock Option Plan", page 12), the holders of common stock have preemptive and subscription rights.

Liability to assessment

The outstanding shares of common stock are fully paid and non-assessable, except that stockholders of every New

York corporation are (in the event of nonpayment by the Corporation) personally liable for debts, wages or salaries owing to employees other than contractors for services performed for the Corporation.

Change of Corporate Name

It is contemplated that the Alcoa subsidiary which acquires the Corporation's business upon consummation of the Plan will thereafter continue such business under the name "Rome Cable Corporation" or other name including [fol. 4521] the name "Rome". Accordingly, it is proposed to change the present name of Rome Cable Corporation to "RTC Liquidating Corporation" by amending its Certificate of Incorporation immediately prior to or promptly after the transfer of the Corporation's assets.

Comparisons of Net Income, Dividends Declared and Book Values

The following tabulation compares the net income, dividends declared and book values per share of common stock of Rome and Alcoa and, since the exchange contemplated by the Plan is at the rate of 6/10 of a share of Alcoa common stock for each share of Rome common stock, the tabulation also shows the net income, dividends declared and book value equivalent to 6/10 of a share of Alcoa common stock. Since Alcoa's fiscal year is the calendar year and Rome's fiscal year ends March 31, a direct comparison for identical periods is not possible. Therefore, the comparison shown in the following tabulation is of periods having the greatest time in common—a comparison of Alcoa data for a calendar year with Rome data for the fiscal year ending the following March 31, providing a common period of nine months. Thus, each year shown in the table below refers to the following periods: for Alcoa—its fiscal year ending on December 31 of such year; for Rome—its fiscal year ending on March 31 of the following year, except that, in the case of 1958, Rome's data are for the calendar year ending December 31 and were determined as set forth in Note 3 to the table.

| Net Income: | Alcoa | | Rome |
|---------------------|---------------|-------------------------|---------------|
| | Per Share (1) | Per 6/10 of a Share (1) | Per Share (2) |
| 1954..... | \$ 2.95 | \$ 1.77 | \$ 1.57 |
| 1955..... | 4.18 | 2.51 | 3.64 |
| 1956..... | 4.24 | 2.54 | 4.04 |
| 1957..... | 3.55 | 2.13 | 1.82 |
| 1958..... | 1.96 | 1.18 | .65 (3) |
| Dividends Declared: | | | |
| 1954..... | .80 | .48 | 1.19 |
| 1955..... | 1.05 | .63 | 1.29 |
| 1956..... | 1.20 | .72 | 1.39 |
| 1957..... | 1.20 | .72 | 1.30 |
| 1958..... | 1.20 | .72 | 1.00 |
| Book Value: | | | |
| Dec. 31, 1958..... | \$30.09 | \$18.05 | \$28.91 |

(1) Net income per share or per 6/10 of a share is based upon the number of shares of common stock outstanding at the end of each year after giving effect to the dividends declared on the preferred stock and after giving effect to the 2-for-1 common stock split-up in 1955. Dividends declared per share and per 6/10 of a share are stated after giving effect to the 2-for-1 common stock split-up in 1955.

(2) Net income per share and dividends declared per share are based on the number of common shares outstanding at the end of each period after giving effect to stock dividends of 10% in 1956 and 5% in 1957.

(3) Net income of Rome for the calendar year 1958 has been constructed by adding to the unaudited figures for the nine-month period ending December 31, 1958 the computed figures for the first three months of 1958 derived by subtracting from audited figures for the year ending March 31, 1958 interim unaudited figures for the nine-month period ending December 31, 1957.

The pro-forma net income per share of common stock of Alcoa for the year ended December 31, 1958, based upon a combination of the income of Alcoa and Rome (the net income of Rome having been computed as set forth in foot note (3) above) and reduced by the sum of (i) the assumed applicable amortization of the excess of the aggregate market value of the shares of common stock of Alcoa to be issued over the net book value of the assets of Rome to be acquired and (ii) the dividends declared on the preferred stock of Alcoa, divided by the total number of shares of common stock of Alcoa which would have been outstanding at December 31, 1958 assuming all Rome shares outstanding and under option were exchanged for Alcoa common stock as proposed, amounts to \$1.89. The pro-forma net income equivalent to 6/10 of a share of Alcoa common stock so computed is \$1.13.

[fol. 4522] The pro-forma book value per share of common stock of Alcoa at December 31, 1958, based upon a combina-

tion of the net assets of Alcoa and Rome increased by the excess of the aggregate market value of the shares of common stock of Alcoa to be issued over the net book value of the assets of Rome to be acquired, and reduced by the sum of (i) the assumed applicable amortization of the above excess and (ii) the redemption value of the preferred stock of Alcoa, divided by the total number of shares of common stock of Alcoa which would have been outstanding at December 31, 1958, assuming all Rome shares outstanding and under option were exchanged for Alcoa common stock as proposed, amounts to \$30.98. The pro-forma book value equivalent to 6/10 of a share of Alcoa common stock so computed is \$18.59.

Market Prices

From August 9, 1937 until July 24, 1957 the common stock of the Corporation was admitted to dealing on the American Stock Exchange (formerly called New York Curb Exchange). On July 24, 1957 the common stock of the Corporation was admitted to dealing on the New York Stock Exchange and dealing in the stock on the American Stock Exchange ceased. The following table sets forth the reported high and low sales prices, for the periods indicated, of the common stock of the Corporation on the American Stock Exchange through July 23, 1957 and thereafter on the New York Stock Exchange, and for the common stock of Alcoa on the New York Stock Exchange, and it also sets forth the market values of 6/10 of a share of Alcoa common stock, based upon the market prices of a whole share of Alcoa common stock.

| | Alcoa Common Stock | | | | Rome Cable Common Stock | |
|---------------------------------------------|--------------------|------------------|----------------------------|------------------|----------------------------|------------------|
| | Per Share | | Per 6/10 of a Share (1) | | Per Share | |
| | High | Low | High | Low | High | Low |
| 1957 First Quarter | 93 $\frac{3}{4}$ | 80 | 56 $\frac{1}{4}$ | 48 | 29 $\frac{3}{4}$ | 26 |
| Second Quarter | 100 $\frac{1}{8}$ | 88 $\frac{1}{2}$ | 60 $\frac{1}{2}$ | 53 $\frac{1}{8}$ | 29 $\frac{3}{8}$ | 26 |
| Third Quarter | 102 | 71 $\frac{1}{4}$ | 61 $\frac{1}{4}$ | 43 | 32 | 26 $\frac{1}{4}$ |
| Fourth Quarter | 77 $\frac{1}{2}$ | 59 $\frac{3}{4}$ | 46 $\frac{1}{2}$ | 35 $\frac{3}{4}$ | 26 $\frac{3}{4}$ | 20 $\frac{1}{2}$ |
| 1958 First Quarter | 74 $\frac{1}{2}$ | 60 $\frac{3}{8}$ | 44 $\frac{3}{4}$ | 36 $\frac{1}{4}$ | 21 $\frac{1}{8}$ | 18 $\frac{1}{2}$ |
| Second Quarter | 71 $\frac{3}{8}$ | 62 $\frac{1}{2}$ | 42 $\frac{3}{8}$ | 37 $\frac{1}{2}$ | 21 $\frac{3}{8}$ | 17 $\frac{3}{4}$ |
| Third Quarter | 90 | 69 $\frac{1}{4}$ | 54 | 41 $\frac{1}{2}$ | 23 $\frac{3}{8}$ | 20 $\frac{1}{4}$ |
| Fourth Quarter | 96 $\frac{1}{2}$ | 82 $\frac{3}{8}$ | 57 $\frac{3}{8}$ | 49 $\frac{3}{8}$ | 32 $\frac{1}{2}$ | 22 |
| 1959 January 1 thru February 27, 1959 .. | 93 $\frac{3}{4}$ | 81 | 56 $\frac{1}{4}$ | 48 $\frac{3}{4}$ | 47 $\frac{3}{4}$ | 30 $\frac{1}{2}$ |

(1) Adjusted to the nearest $\frac{1}{8}$.

On February 27, 1959 the closing price on the New York Stock Exchange for the common stock of Rome Cable Corporation was \$46.50 per share and the closing price on the New York Stock Exchange for the common stock of Alcoa was \$83.125 per share. The market value of 6/10 of a share of common stock of Alcoa, based upon the closing price on February 27, 1959, was \$49.875.

[fol. 4523]

Rome Cable Corporation

Summary of Earnings

The summary of earnings with respect to the five years ended March 31, 1958, has been examined by Ernst & Ernst, independent public accountants, whose report thereon appears in this Proxy Statement. The summary, insofar as it relates to the three years ended March 31, 1958, should be read in conjunction with the financial statements and related notes included in this Proxy Statement. The unaudited figures for the nine months periods ended December 31, 1958 and 1957, include all known adjustments, which consisted solely of normal recurring accruals, considered necessary for a fair presentation of the results for the periods indicated, but are not presented as being indicative of the sales and operating results that may be expected for the full fiscal year.

| | Nine Months ended | | Year ended March 31, | | | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------|----------------------------------|----------------------|-----------------|------------------------|-----------------|
| | December 31, 1958 (Unaudited) | December 31, 1957 (Unaudited) | 1958 | 1957 | 1956 (In thousands) | 1955 |
| Net sales..... | \$27,735 | \$32,239 | \$40,614 | \$52,790 | \$56,996 | \$39,186 |
| Cost of products sold..... | 24,773 | 27,498 | 34,805 | 44,560 | 49,742 | 34,955 |
| Distribution, administrative and general expenses..... | 2,241 | 2,666 | 3,511 | 3,414 | 2,930 | 2,355 |
| | <u>\$27,014</u> | <u>\$30,164</u> | <u>\$38,316</u> | <u>\$47,974</u> | <u>\$52,672</u> | <u>\$37,310</u> |
| Interest expense..... | \$ 721 | \$ 2,075 | \$ 2,298 | \$ 4,816 | \$ 4,324 | \$ 1,876 |
| Other charges—credits*..... | 166 6* | 149 3* | 211 9* | 157 53 | 149 18* | 133 5* |
| | <u>\$ 160</u> | <u>\$ 146</u> | <u>\$ 202</u> | <u>\$ 210</u> | <u>\$ 131</u> | <u>\$ 128</u> |
| Provision for federal taxes on income..... | \$ 561 | \$ 1,929 | \$ 2,096 | \$ 4,606 | \$ 4,193 | \$ 1,748 |
| | <u>285</u> | <u>997</u> | <u>1,077</u> | <u>2,450</u> | <u>2,170</u> | <u>817</u> |
| NET EARNINGS..... | <u>\$ 276</u> | <u>\$ 932</u> | <u>\$ 1,019</u> | <u>\$ 2,256</u> | <u>\$ 2,023</u> | <u>\$ 931</u> |
| Net earnings per share of Common Stock outstanding at the end of the fiscal year or period (adjusted in 1956, 1955 and 1954, for subsequent common stock dividends)..... | \$ 50 | \$1.67 | \$1.82 | \$4.04 | \$3.64 | \$1.57 |
| Dividends paid or payable per share: In cash per share of Common Stock outstanding at the end of the fiscal year or period (adjusted in 1956, 1955 and 1954, for subsequent common stock dividends)..... | \$ 75 | \$1.05 | \$1.30 | \$1.39 5% | \$1.29 10% | \$1.19 |
| In Common Stock..... | — | — | — | — | — | — |

Note—Reference is made to Note E of Notes to Financial Statements.

Materials represent a high percentage of the sales dollar of Rome's products. During the above period copper, the largest material component, climbed from 30 cents in 1954 to a world price of 54¢ in 1956 and fell to approximately 20 cents in early 1958 thus making wide swings in dollar volume not truly reflecting physical volume. As an example, while sales dollars for the year ended March 31, 1956 actually increased 45% above the previous year the physical volume increase was only 18%. The drastic and steady decline in world price of copper accentuating need for customer inventory liquidation caused an earlier reduction in incoming order volume in the copper fabrication business than was true of industry generally. Unrealistic competitive price reductions despite sizable operational cost reductions affected earnings in fiscal year 1957 and 1958.

[fol. 4524] Aluminum Company of America and
Consolidated Subsidiary Companies

Summary of Consolidated Income

The following summary of consolidated income (including the related notes) of Aluminum Company of America and consolidated subsidiary companies has been examined by Lybrand, Ross Bros. & Montgomery, independent certified public accountants, whose opinion with respect thereto appears elsewhere in this Proxy Statement. The summary should be read in conjunction with the consolidated financial statements and related notes of Aluminum Company of America and consolidated subsidiary companies appearing elsewhere herein.

Income:

| | Years (In thousands) | | | |
|-------------------------------------------------------------------------|-------------------------|----------------|----------------|----------------|
| | 1958 | 1957 | 1956 | 1955 |
| Net sales and operating revenues..... | \$753,140 | \$869,378 | \$864,416 | \$845,028 |
| Income from securities and investments..... | 1,661 | 1,988 | 2,311 | 2,013 |
| Other income, including adjustments applicable to prior years, net..... | 3,343 | 4,095 | 3,058 | 1,704 |
| Total..... | <u>758,144</u> | <u>875,461</u> | <u>869,785</u> | <u>848,745</u> |
| Costs and expenses (A): | | | | |
| Cost of goods sold and operating expenses..... | 568,788 | 615,878 | 595,902 | 578,911 |
| Selling, general administrative and other expenses..... | 97,324 | 100,371 | 89,937 | 82,399 |
| Interest expense..... | 17,647 | 14,644 | 9,375 | 10,584 |
| Total..... | <u>683,759</u> | <u>730,893</u> | <u>695,214</u> | <u>671,894</u> |
| Income before United States and foreign taxes on income..... | <u>74,385</u> | <u>144,568</u> | <u>174,571</u> | <u>176,851</u> |
| Provision for United States and foreign taxes on income: | | | | |
| United States: | | | | |
| Income taxes—current..... | 23,440 | 51,855 | 62,459 | 67,070 |
| Income taxes—future..... | 2,600 | 11,650 | 17,250 | 17,550 |
| Foreign..... | 5,400 | 5,495 | 5,241 | 4,030 |
| | <u>31,500</u> | <u>69,000</u> | <u>84,950</u> | <u>89,250</u> |
| | | | | <u>57,513</u> |
| | | | | <u>36,028</u> |
| | | | | <u>16,538</u> |
| | | | | <u>4,947</u> |

| | | | | | |
|---------------------------------------------|------------------|------------------|------------------|------------------|------------------|
| Net income (B) | 42,885 | 75,508 | 89,021 | 87,001 | 61,875 |
| Dividends declared on Preferred Stock | 2,475 | 2,475 | 2,475 | 2,475 | 2,475 |
| Net income applicable to Common Stock | <u>\$ 40,410</u> | <u>\$ 73,033</u> | <u>\$ 87,146</u> | <u>\$ 85,126</u> | <u>\$ 59,400</u> |

Notes:

(A) Provision for depreciation and depletion of properties, plants and facilities and amortization of intangible assets included in costs and expenses, expressed in thousands, were as follows: 1958—\$85,660; 1957—\$87,659; 1956—\$50,771; 1955—\$45,114; and 1954—\$40,653. (B) Beginning with the year ended December 31, 1956, the last-in first-out method was adopted for determining cost of substantially all inventories, instead of the average cost method theretofore generally used. Also, at December 31, 1956, intercompany profits in inventories, which had previously been computed and eliminated in consolidation before considering income taxes payable by subsidiaries on such profits, were eliminated on an after-tax basis. The combined effect of these changes on the net income for 1956 was not material. The Company and consolidated domestic subsidiary companies have used the sum-of-the-years-digits method of computing depreciation of property assets acquired since December 31, 1953, in lieu of the straight-line method theretofore used. The effect of this change on net income for 1954 was not material.

Net income includes the earnings of subsidiaries in Canada, Venezuela and Suriname, expressed in thousands in United States currency, as follows: 1958—\$7,774; 1957—\$6,126; 1956—\$5,877; 1955—\$4,914; and 1954—\$6,995. Translation into United States currency was made at official or current rates of exchange, except that allowances for depreciation and depletion were translated at rates prevailing at the time of acquisition of the related assets, and Canadian dollars were translated at par.

Net sales and operating revenues increased progressively from 1954 to 1957. These changes are attributable to the increased demand for Alcoa's products and expansion of its facilities. A definite increase in demand in relationship to supply occurred in 1955 over 1954. Net sales and operating revenues decreased in 1958 partially as a result of a decline [fol. 4525] in general business conditions and partially as a reflection of an excess of aluminum capacity in the industry in relation to the then current demand. Increases in net income from 1954 through 1956 resulted from the increase in net sales and operating revenues and generally satisfactory profit margins. In spite of an increase in net sales and operating revenues in 1957 a decrease in net income was experienced due principally to a decrease in shipments of fabricated products and lower profit margin. The decrease in 1958 net income is attributed to the lower level of operations as well as to the decrease in profit margin as a result of competitive price cutting which, while evident in 1957, was more fully felt in 1958 as evidenced by the Company's reduction in its price of primary aluminum pig of 2¢ per pound in April, 1958 followed by an increase of only 7/10th of 1¢ per pound in August, 1958.

Proposed Accounting Treatment of Acquisition by Alcoa

The Plan contemplates that either the assets of Rome will be transferred to the Subsidiary in exchange for stock of Alcoa which had theretofore been issued to the Subsidiary or the assets of Rome will be transferred directly to Alcoa for its stock and then such assets will be retransferred by Alcoa to its Subsidiary for the Subsidiary's capital stock.

Alcoa will issue to the Subsidiary, or directly to the Corporation, such number of shares of common stock of Alcoa as shall be required for delivery to the Corporation in payment for the assets of the Corporation. In return, Alcoa will receive all of the shares of capital stock of the Subsidiary which will be recorded as an investment in the accounts of Alcoa at the aggregate market value of such shares of common stock of Alcoa on January 22, 1959, that being the date on which the offer of Alcoa to purchase the assets of the Corporation was accepted by the Corporation's Board of Directors. The aggregate par value of such shares of

common stock of Alcoa will be added to the common stock account of Alcoa and the balance will be recorded as additional capital.

It is expected that the aggregate market value so determined of the shares of common stock of Alcoa which will be issued will exceed the net book value of the assets of the Corporation which are to be acquired by the Subsidiary. In the accounts of the Subsidiary this excess will be allocated to appropriate specific assets and written off over the lives of such assets or will otherwise be amortized in accordance with generally accepted accounting principles.

History and Business of Rome Cable Corporation

Organization

The Corporation was incorporated under the laws of the State of New York on January 20, 1936. It has three plants which are located in Rome, New York, Torrance, California and Collegeville, Pennsylvania. Its executive offices and research center are located in Rome, New York.

Products

The Corporation manufactures in its Rome, New York plant; copper rods and the following wire and cable products for use in the transmission of electrical energy: bare wire, weatherproof wire, magnet wire, building wire, heavy duty flexible cords and cables, mining and welding cables, power and control cables, service drop and service entrance cable, hook-up wire, instrumentation and missile cables as well as many custom built cables for industry and Government.

Copper rolled into copper rod in its own rod mill and drawn into copper wire is the major metal used in the above products. The Corporation also produces copper rods for sale to customers. Like other prime fabricators in the wire and cable industry the Corporation also processes copper wire bars supplied by customers into copper rods and various copper wire and cable products, on a fabricating charge basis. A number of wire products are made from aluminum rods rolled in its own mill.

At its Torrance plant the Corporation manufactures rigid and thin wall steel conduit and mechanical steel tubing. At

its Collegeville plant it manufactures expanded steel cable troughs, cable pulling devices and certain tools and equipment used for the installation and maintenance of underground electrical transmission and distribution power systems.

Marketing

The Corporation markets its products through its own sales offices, salesmen and sales agents. It has 18 sales offices and 10 warehouses throughout the United States. About one-half of the Corporation's products are sold to electrical [fol. 4526] wholesalers who in turn sell to contractors, utilities, industrials, and municipalities. About one-fifth is sold directly to other wire and cable manufacturers, 14% to electrical equipment, electronic and other industrials, and 10% to utilities. The balance goes to a miscellany of other users, including the Government.

Plants

The Rome plant is located on a 236 acre tract in Rome, New York which the Corporation owns in fee. Buildings cover a total of 894,000 square feet. Buildings are essentially steel, brick and concrete construction, with the exception of the new research center, completed in 1958, which is of steel and glass window-wall construction. The executive offices are located in Rome, N. Y.

The Torrance plant is located on an 11 acre tract in Torrance, California which the Corporation owns in fee. The floor space of the buildings is 146,000 square feet. General construction is of steel, concrete, wood and brick.

The Collegeville plant is located on a two acre tract in Collegeville, Pennsylvania which the Corporation owns in fee. The buildings are of steel, concrete, wood and brick construction, having an area of 45,000 square feet.

Raw Materials

Raw materials used by the Corporation in the manufacture of its products in the order of their importance are: copper, steel, natural and synthetic rubber, polyvinyl and polyethylene plastics, aluminum, zinc and lead, all of which

are purchased from others. The Corporation's purchases of wire bar copper represents approximately 60% of its raw material purchases. Steel for the Torrance plant, purchased in sheet form, represents approximately 15% of the raw material purchases. Aluminum purchased in the form of pig represents approximately 3% of its raw material requirements.

Employee Relations

As of December 31, 1958 the Corporation had 1450 employees, including 933 hourly paid workers. The Corporation has never had a strike or any work stoppage due to labor difficulties in its entire history.

Security Holdings of Directors and Officers

The number of shares of Common Stock of the Corporation beneficially owned, as of February 20, 1959, by the directors and officers of the Corporation and their associates, according to information furnished by such directors and officers, was as follows:

Shares of Rome Cable Corporation
Common Stock beneficially owned
as of February 20, 1959

| Name | By Individual | By Associates |
|---------------------|---------------|----------------------------------------------------------------------------------------------------|
| Harry W. Barnard | 7,010 | 265 7518(1) 2000(2) 1820(3) 3990(4) 2425(4) 6849(4) 7518(1) 2000(2) 210 |
| Herbert T. Dyett | 50,601 | |
| John H. Dyett | 31,304 | |
| Charles H. Ellis | 3,991 | |
| Alfred S. Foote | 300 | |
| A. D. Ross Fraser | 6,000 | 377 7518(1) |
| Glenn Koger | 446 | |
| Hal A. Kroeger | 2,700 | |
| John L. Loeb | 7,737 | (5) |
| Frederick S. Marks | 1,042 | 86 2000(2) |
| Glenn E. Rolston | 3,167 | |
| Jay T. Sarles | 1,886 | 1492 |
| Rudolph A. Schatzel | 3,325 | 315 |
| [fol. 4527] | | |
| James H. Sharp | 100 | 23 |
| Gerard A. Weiss | 359 | 112 |
| Allan Ziegler | 133 | |

- (1) H. W. Barnard, J. H. Dyett and A. D. R. Fraser are officers of Rome Cable Foundation, Inc., holder of 7,518 shares, but in which they have no beneficial interest.
- (2) H. W. Barnard, J. H. Dyett and F. S. Marks are officers of Herbert T. Dyett Foundation, Inc., holder of 2,000 shares, but in which they have no beneficial interest.
- (3) John H. Dyett is a son of H. T. Dyett.
- (4) Certain associates of J. H. Dyett hold 3,990 shares but in which he has no beneficial interest, and there were held in Trust for Julia W. Dyett, wife of J. H. Dyett, 2,425 shares in which J. H. Dyett is a Trustee but in which he has no beneficial interest. J. H. Dyett is Trustee of a trust holding 6,849 shares for Charlotte D. White, his sister, but in which he has no beneficial interest.
- (5) On February 20, 1959 certain associates of John L. Loeb were beneficial owners of common stock of the Corporation as follows: Frances L. Loeb, wife of John L. Loeb, 3,465 shares; children of John L. Loeb 6,898 shares; and there were held in trust under Trust indenture 3,636 shares in which John L. Loeb is Trustee for his children, but in which he has no beneficial interest, and 2,756 shares in which Frances L. Loeb is Trustee for their children, but in which she has no beneficial interest. Carl M. Loeb Rhoades & Co. were holders of record but not beneficial owners of 34,079 shares of common stock.

Stock Option Plan

A Stock Option Plan for certain key employees covering 36,000 shares of Common Stock was approved by the share owners on June 20, 1956. On the same date options to purchase 32,800 shares were granted to 31 officers and key employees at \$26.85 per share (95% of fair market value). On January 4, 1957 a 5% stock dividend was paid which pursuant to the plan increased the number of shares reserved for issuance to 37,800 and the number of shares subject to option to 34,440 at \$25.57 per share. The options were exercisable in cumulative annual installments and enforceable for ten years. As of December 10, 1958, options to purchase 17,535 shares were exercisable but no options had been exercised, and options to purchase additional shares were to become exercisable as follows: 5,250 on June 20, 1959, 4,515 on June 20, 1960, 3,990 on June 20, 1961, 3,150 on June 20, 1962. On December 10, 1958 the Stock Option Committee waived the cumulative provisions of the options and thereupon options at \$25.57 per share (aggregating \$880,630) for a total of 34,440 shares became exercisable immediately. As of December 10, 1958, the fair market value of Rome Cable Corporation Common Stock was \$26.00 per share (aggregating \$895,440 on 34,440 shares). Any option may be terminated by the Stock Option Committee upon sixty days notice to the optionee. As of February 20, 1959, no options had been exercised. The Plan provides that shares of stock of the Corporation purchased by the exercise of stock options within three months after the Closing Date are exchangeable for Alcoa common stock on the basis of 6/10 of a share of Alcoa common stock for each share of Rome common stock. The Plan alternatively provides that by mutual agreement of Rome and Alcoa, Alcoa will assume the options outstanding at the Closing Date to the end that there may be purchased thereunder 6/10 of one share of Alcoa common stock at the price of \$25.57 for each share of Rome common stock that might have been purchased by exercise of the options on or prior to the Closing Date. In either event, it is intended that all options will be terminated, as is permitted under the terms of the options, within three months after the Closing Date.

History and Business of Aluminum Company of America and Other Data Relating to It

References to the "Company" in the following discussion of the history and business of Alcoa shall be taken to mean Aluminum Company of America.

Organization of Alcoa

The Company was incorporated under the laws of the Commonwealth of Pennsylvania on July 29, 1925, through the merger and consolidation of Aluminum Company of America, a Pennsylvania corporation incorporated on September 18, 1888, and Canadian Manufacturing and Development Company, a Pennsylvania corporation incorporated on May 6, 1925. The principal offices of the Company are located in the Alcoa Building, Mellon Square, Pittsburgh 19, Pennsylvania.

[fol. 4528] Alcoa's Capital Structure

The capitalization of the Company on December 31, 1958, was as follows:

| Long-Term Debt(1) | Title of Issue | Originally Authorized | Outstanding |
|----------------------------------------------------|----------------|-----------------------|---------------------|
| Sinking Fund Debentures | | | |
| 3 1/4% due 1964 | | \$125,000,000 | \$ 52,500,000 |
| 3 7/8% due 1979 | | 100,000,000 | 83,400,000 |
| 4 1/4% due 1982 | | 125,000,000 | 119,800,000 |
| 3 7/8% due 1983 | | 125,000,000 | 125,000,000 |
| Notes Payable | | | |
| 2.55% due 1967 | | 40,000,000 | 20,000,000 |
| 3% due 1973 | | 60,000,000 | 60,000,000 |
| Capital Stock | | | |
| Serial Preferred Stock (par value \$100 per share) | | 1,000,000 shs. | 659,909 shs. |
| \$2.75 Cumulative Preferred Stock | | 660,000 shs. | 20,644,966 shs. (2) |
| Common Stock (par value \$1 per share) | | 50,000,000 shs. | |

(1) Outstanding long-term debt is exclusive of debt due within one year, and exclusive of miscellaneous long-term debt of the Company and its subsidiaries in an aggregate amount of approximately \$2,000,000. See Note 3 to Notes to Consolidated Financial Statements for debt maturities.

(2) If all the shares of Common Stock covered by options under the Employees' Stock Option Plan had been issued and outstanding on December 31, 1958, there would have been 20,981,316 shares of Common Stock outstanding on that date.

Alcoa's Business and Properties

The Company, with its subsidiaries, is an integrated producer and fabricator of aluminum. Its principal operations include mining and processing of bauxite, an aluminum-bearing ore; transportation of bauxite to the United States; production of alumina from bauxite; smelting of aluminum from alumina; making of aluminum alloys; and fabrication of aluminum and aluminum alloys into semi-finished and finished products.

The Company's bauxite is mined principally in Surinam, South America, under concessions which will expire in 2032. The Company estimates its lands held under concessions contain sufficient ore to supply the Company's requirements, at anticipated consumption rates, for the term of the concessions. Surinam bauxite is transported to the United States in ships owned or chartered by subsidiaries of the Company. In connection with the transportation of bauxite, a subsidiary conducts a general shipping business in the Caribbean and to a smaller degree in other areas. Some bauxite is also mined on Company-owned and leased properties in Arkansas. These properties are estimated to contain sufficient bauxite reserves to supply the Company's Arkansas alumina plant, at the 1957-1958 rate of consumption, for at least forty years. Bauxite is being produced from each mining area at a favorable unit cost in relation to prevailing aluminum prices.

A subsidiary of the Company has a concession from the government of the Dominican Republic to explore for and produce bauxite from a number of exploitation parcels. The concession, as amended, covers approximately 22,000 acres and expires in 2007. Bauxite mining and shipping facilities have been provided and ore shipments began in early 1959. The Point Comfort, Texas, alumina plant, which went into partial production early in 1959, is designed to process Dominican-type as well as other types of bauxite.

Bauxite is refined into alumina at Company plants in Mobile, Alabama, Bauxite, Arkansas, and Point Comfort, Texas.

Aluminum is produced from alumina by an electrolytic process requiring large amounts of electric power generated within reasonable proximity of each of the Company's

smelting plants. A substantial portion of such power is generated by the Company or its subsidiaries and the remainder is purchased from others under long-term contracts, supplemented by short-term or spot purchases to meet short-term needs. It is believed that the Company is in a position to generate or purchase sufficient electric power to operate its smelting plants satisfactorily, except for conditions beyond its control, including variations in the availability of water power due to stream flow conditions.

The Company's principal contract to purchase power for its Alcoa, Tennessee, plant expires December 31, 1962; its principal contracts to purchase power for its Wenatchee, Washington, and Vancouver, Washington plants expire in 1971; and its principal contracts to purchase power for its Massena, New York, plant expire in 1997 and 1999, with a substantial curtailment possible under one of the contracts as early as about 1986. The Company has no reason to believe that an extension of the contracts expiring in 1962 and 1971 cannot be negotiated at an appropriate time.

[fol: 4529] In the generation of power by the Company or subsidiaries, any of several sources of energy are used—gas, coal, lignite or water. Where the Company uses gas (Point Comfort), it has reserves either owned or under contract estimated to be sufficient for operation at anticipated maximum consumption rates for approximately seven years. The Company has no reason to believe that it would be unable to procure natural gas at market prices when additional amounts thereof are needed. Where it uses lignite (Rockdale, Texas), it has reserves either owned or under contract estimated to be sufficient for operation at anticipated consumption rates for over fifty years. Where it plans to use coal (Evansville, Indiana), it has acquired reserves estimated to be sufficient for the operation of the plant as presently planned for about sixty years. In its use of water power in connection with the generation of electric power for the Company's Alcoa plant, the Company operates subject to a Federal Power Commission license effective until March 1, 2005. A similar license in connection with use of water power for the generation of electric power for the Badin, North Carolina, plant is effective until May 1, 2008.

The operation of the Company's hydroelectric facilities

in the Little Tennessee Valley is integrated with the operations of the Tennessee Valley Authority (T. V. A.) pursuant to the terms of an agreement effective until December 31, 1962, and thereafter from year to year until terminated by three years' prior notice.

Fluorspar for the production of chemicals used in the smelting of aluminum or for sale to others is mined in Hardin County, Illinois, where the Company operates a crushing and beneficiation mill. The Company has mining rights in Illinois, Kentucky, Colorado and Idaho covering properties estimated to contain sufficient ore to supply the fluoride requirements of the Company and its subsidiaries, on the basis of their 1957-1958 use in the smelting of aluminum, for approximately twenty years.

During 1958, the Company's production of primary aluminum amounted to about one-third of the total produced in the United States. The Company's total production of primary aluminum, measured in short tons, for each of the years 1954 through 1958 was as follows: 1954—666,000; 1955—702,000; 1956—756,000; 1957—712,000; and 1958—520,000. Contractual and spot purchases of aluminum for the same years, measured in short tons, were: 1954—92,300; 1955—78,700; 1956—111,900; 1957—82,400; and 1958—79,200. Current schedules call for production in 1959 of about 568,000 short tons. It is estimated that purchases of aluminum in 1959 will amount to about 51,000 short tons, which includes 49,000 short tons to be procured under existing purchase agreements.

Primary aluminum is fabricated, cast or otherwise processed at seventeen plants of the Company located in twelve states. These plants are generally located near the various market areas for the products produced by the Company. Information with respect to each of these fabricating plants is shown in the following tabulation:

| Location | Principal Products | Floor Space (Sq. ft.) (Approximate) |
|-------------------------|-------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------|
| Alcoa, Tennessee | Sheet and plate | 2,480,000 |
| North Plant | Sheet and plate, foil, powder and paste, and welded tube | 1,025,000 |
| West Plant | Castings (sand, plaster process and permanent mold) | 400,000 |
| Bridgeport, Connecticut | Cooking utensils | 130,000 |
| Chillicothe, Ohio | Castings (sand, plaster process and permanent mold), hammer and press forgings and magnesium castings (permanent mold) and forgings | 1,812,000 |
| Cleveland, Ohio | Extrusions (including impact extrusions) | 1,500,000 |
| Crosson, Pennsylvania | Sheet, plate and foil | 3,200,000 |
| Davenport, Iowa | Castings (sand, plaster process and permanent mold) | 369,000 |
| Detroit, Michigan | Sheet, foil and impact extrusions | 1,083,000 |
| Edgewater, New Jersey | Die castings (including magnesium) | 163,000 |
| Garwood, New Jersey | Die castings | 243,000 |
| Hillside, Illinois | Tube and extrusions | 1,879,000 |
| Lafayette, Indiana | Rivets and fasteners, screw machine products and nails | 250,000 |
| Lancaster, Pennsylvania | Wire, rod, bar and structural shapes, bare wire and cable, covered wire and cable, and cable accessories | 2,520,000 |
| Massena, New York | Tube, extrusions, foil, powder, paste, cooking utensils, jobbing products, magnesium extrusions and other products | 2,260,000 |
| New Kensington, Pa. | Bottle and jar closures, and collapsible tubes | 270,000 |
| Richmond, Indiana | Rod, wire, extrusions, bare wire and cable and cable accessories | 445,000 |
| Vancouver, Washington | Castings (sand, plaster process and permanent mold) and forgings (including magnesium), rivets, extrusions and tube | 1,222,000 |
| Vernon, California | | |

[fol. 4530] Principal products manufactured and marketed by the Company include, in addition to primary aluminum, sheet and plate, extruded products, castings, wire, rod and bar, forgings, electrical conductors and accessories, foil, tubing, certain chemical products, rivets and screw machine products, impact extrusion products, jobbing products, closures, and powder and paste. The Company produces and markets "Alcoa Wrap" household foil and "Wear-Ever" cooking utensils.

Net sales and operating revenues from 1954 through 1958, in thousands of dollars, were as follows:

| Years | Primary Aluminum (Pig and Ingot) | | Fabricated Products | Other Sales and Misc. Revenues(1) | Operating Revenues(2) | Total Net Sales and Operating Revenues(3) |
|-------|-------------------------------------|-----------|------------------------|-----------------------------------------|--------------------------|----------------------------------------------------|
| | Tons | Amounts | | | | |
| 1954 | 317,766 | \$132,726 | \$493,619 | \$43,375 | \$38,624 | \$708,344 |
| 1955 | 238,448 | 112,694 | 647,327 | 39,671 | 45,336 | 845,028 |
| 1956 | 204,149 | 107,732 | 667,822 | 43,421 | 45,441 | 864,416 |
| 1957 | 246,885 | 132,975 | 639,385 | 46,722 | 50,296 | 869,378 |
| 1958 | 211,436 | 109,955 | 561,788 | 31,744 | 49,653 | 753,140 |

(1) Includes bauxite, alumina in various forms, and other products.

(2) Includes revenues from shipping and other operations.

(3) The figures in this column include the following approximate percentages of total net sales to, and operating revenues from, the U. S. Government: 1954—16%; 1955—6%; 1956—1%; 1957—7%; 1958—7%.

During 1958, Alcoa completed shipments of primary aluminum to General Services Administration under contracts entered into in 1950-1951 in connection with expansions of Alcoa's smelting facilities. Such shipments for 1958 were about 7% below those of 1957.

Alcoa reduced its price of primary aluminum pig by 2¢ per pound to 24¢ per pound on April 1, 1958, following world market aluminum price reductions. Alcoa increased its price of primary aluminum pig by 7/10 of 1¢ per pound to 24.7¢ per pound on August 1, 1958. At the times of both primary aluminum price changes, appropriate adjustments were made in the published prices of other products sold by Alcoa.

In order to improve its position in the highly competitive markets in which its products are sold, the Company, many years ago, initiated an intensive and coordinated research and development program. It is the policy of the Company to pursue this program vigorously to stimulate the development of new and improved products of aluminum and new and expanding markets for aluminum.

Alcoa's Property Additions and Retirements

Property expenditures, retirements and net additions to the plant accounts for the years 1954 through 1958 are shown in the following table:

| Years | Expenditures | Retirements | Net Additions |
|------------|---------------|--------------|---------------|
| 1954..... | \$ 67,151,000 | \$12,061,000 | \$ 55,090,000 |
| 1955..... | 79,521,000 | 17,113,000 | 62,408,000 |
| 1956..... | 139,311,000 | 17,834,000 | 121,477,000 |
| 1957..... | 207,500,000 | 18,106,000 | 189,394,000 |
| 1958..... | 81,600,000 | 21,051,000 | 60,549,000 |
| Total..... | \$575,083,000 | \$86,165,000 | \$488,918,000 |

Important facilities added or expanded during this period include smelting plants at Wenatchee and Rockdale, alumina and alumina chemicals plants at Bauxite, addition of one potline to the five existing potlines at the Point Comfort smelting plant, a plant at Lancaster for the production of aluminum fasteners and screw machine products, a new foil mill at Davenport, and various additions to fabricating facilities, particularly at the Davenport and Alcoa plants. In addition to major plant expansions, additional equipment and miscellaneous additional facilities were added. These

included ore-carrying ships and hydroelectric developments, including a new dam and generating station at Chilhowee, Tennessee.

[fol. 4531] In 1956, the Company started construction of a smelting plant and steam-electric generating facilities near Evansville, Indiana, designed to produce approximately 150,000 tons of aluminum per year. Acquisition of the necessary coal reserves for fuel is now substantially completed. The steam-electric generating station and the first of five planned units of the smelting plant will be essentially completed in 1959. The Company has not decided when to complete the remainder of the work.

In 1956, construction of an alumina plant on the Texas coast near the Point Comfort smelter was started. One of the four units of this plant was completed early in 1959 and it is expected that a second unit will be completed in 1960. The Company has not decided when to complete the remainder of the work. Additional smelting facilities at Massena and at Point Comfort were started in 1956 and were completed in 1958, with the exception of one potline at Massena.

The Company and the Government of Suriname have entered into an agreement under which the Company will construct in that country an aluminum smelting plant and hydroelectric facilities to furnish necessary electrical energy. The smelting plant would be designed to produce approximately 60,000 tons of aluminum annually. The agreement also provides that at a later date the Company will construct an alumina refining plant to process local bauxite. Concessions for mining and exploration for bauxite have also been extended and enlarged under the agreement. It is presently estimated that the total investment in the project will eventually be approximately \$150,000,000.

The Company presently estimates that the outlay for additional facilities for 1959 will be approximately \$65,000,000. It is expected that cash on hand and to be generated in the normal course of business will be sufficient to finance these facilities.

Description of Alcoa's Capital Stock

By Article Fifth of the Articles of Incorporation, as amended, of the Company, it is authorized to issue 1,000,000 shares of Serial Preferred Stock of the par value of \$100 per share and 50,000,000 shares of Common Stock of the par value of \$1 per share.

Pursuant to said Article Fifth, the Serial Preferred Stock may be issued in one or more series and the Board of Directors is authorized to divide shares of Serial Preferred Stock into series and to determine the number of shares of any series, and, subject to the provisions of said Article, to determine the rate of dividend (including the date from which dividends shall be cumulative), the price at, and the terms and conditions on, which shares may be redeemed, the amounts payable on shares in the event of voluntary or involuntary liquidation and sinking fund and conversion provisions, if any.

The Board of Directors has by resolution established a series of Serial Preferred Stock designated "\$3.75 Cumulative Preferred Stock" and consisting initially of 660,000 shares.

The complete terms and provisions relating to the capital stock of the Company are contained in said Article Fifth of the Articles of Incorporation, as amended, and the said resolution of the Board of Directors, copies of which are filed with the Securities and Exchange Commission, to which copies reference is made, and the summaries herein relating to such stock are qualified in their entirety by such reference.

(a) *Dividend rights.* The holders of Common Stock are entitled to receive dividends, when and as declared by the Board of Directors, but no dividend shall be declared or paid on the Common Stock unless all quarterly dividends accrued on the Serial Preferred Stock and the dividend thereon for the current quarter shall have been paid or declared and set apart.

(b) *Voting rights.* Holders of Common Stock are entitled to one vote per share and to cumulative voting rights in the election of directors.

The holders of Serial Preferred Stock have no voting rights except as otherwise provided by law and except that:

(i) If at any time the amount of any dividends on Serial Preferred Stock which have accrued and which have not been paid or declared and set apart shall be at least equal to the amount of four quarter-yearly dividends, the holders of Serial Preferred Stock shall have one vote per share, provided, however, that such voting rights of the holders of Serial Preferred Stock shall continue only until all quarter-yearly dividends accrued on the Serial Preferred Stock have been paid or declared and set apart.

[fol. 4532] (ii) Without the consent of the holders of at least a majority in some cases, and two-thirds in other cases, of the shares of Serial Preferred Stock at the time outstanding, the Company may not take certain designated actions, particularly action relating to or affecting such Serial Preferred Stock, or any class of stock ranking on a parity with or senior to it as to dividends or assets, or involving merger or consolidation with certain designated results as to any class of stock ranking senior to or on a parity with the Serial Preferred Stock, or involving the disposition of all or substantially all of the Company's property or business or the voluntary liquidation, dissolution or winding up of its affairs.

(c) *Liquidation rights.* Upon any liquidation, dissolution or winding up of the Company, whether voluntary or involuntary, after payments to holders of Serial Preferred Stock of such amount as shall have been fixed by the Board of Directors, plus accrued dividends, the remaining assets of the Company shall belong to and be divided among the holders of Common Stock. The consolidation or merger of the Company with or into any other corporation or corporations in pursuance of applicable statutes providing therefor shall not be deemed to be a liquidation, dissolution or winding up of the Company.

Upon any voluntary or involuntary liquidation, dissolution or winding up of the Company, the holders of \$3.75 Cumulative Preferred Stock shall be entitled to \$100 per share, plus accrued dividends.

(d) *Preemptive or other subscription rights.* The holders of Common Stock have no right to participate in any right

of subscription to any increased or additional capital stock of the Company.

(e) *Liability to assessment by the Company.* The Common Stock is non-assessable.

Transfer Agents for the Common Stock are Mellon National Bank and Trust Company, Pittsburgh, and Bankers Trust Company, New York. Registrars are Fidelity Trust Company, Pittsburgh, and Guaranty Trust Company, New York. The Common Stock of the Company is listed on the New York Stock Exchange.

Information Concerning Alcoa's Directors and Officers

The directors and officers of the Company, and their positions and offices, are as follows:

| Name of Director or Officer | Positions and Offices Held | Name of Director or Officer | Positions and Offices Held |
|--------------------------------|---------------------------------------------------------------------------------------|--------------------------------|-------------------------------|
| M. M. Anderson | Director and Vice President | F. J. Close | Vice President |
| R. V. Davies | Director and Vice President | H. C. Erskine | Vice President |
| Leon E. Hickman | Director, Vice President and General Counsel, Member of the Executive Committee | Lewis P. Favorite | Vice President |
| Alfred M. Hunt | Director and Secretary | B. J. Fletcher | Vice President |
| Roy A. Hunt | Director and Chairman of the Executive Committee | J. P. Haight | Vice President |
| Frank L. Magee | Director and President, Member of the Executive Committee | Arthur P. Hall | Vice President |
| Richard K. Mellon | Director, Member of the Executive Committee | R. O. Keefer | Vice President |
| George J. Stanley | Director | Lawrence Litchfield, Jr. | Vice President |
| I. W. Wilson | Director and Chairman of the Board, Member of the Executive Committee | Robert B. McKee | Vice President |
| George W. Wyckoff | Director | Edward B. Wilber | Vice President and Treasurer |
| N. R. Althausser | Vice President and Controller | R. E. Coulter | Assistant Treasurer |
| | | C. W. Head | Assistant Treasurer |
| | | Matt. W. Stanley | Assistant Treasurer |
| | | S. T. Gustina | Assistant Controller |
| | | C. C. Conner | Assistant Secretary |
| | | Harry Flynn | Assistant General Counsel |
| | | William K. Unverzagt | Assistant General Counsel |

Each of the officers has been in the employ of the Company for more than five years. From March 1, 1951 until April 30, 1954, Mr. Wilber was President of American Lumber & Treating Co., in which the Company had an interest. Prior to that time he was employed by the Company for many years.

[fol. 4533] Direct Remuneration and Retirement Plan
Data—Alcoa's Directors and Officers

The direct remuneration for 1958 of each of the three highest paid officers and of each director whose aggregate remuneration accrued by the Company during 1958 exceeded \$30,000, and for all directors and officers as a group, together with their estimated retirement benefits, are as follows:

| Name of Individual or Identity of Group | Capacities in Which Remuneration Was Received | Aggregate Remuneration (1) | Estimated Annual Retirement Benefits (2) |
|--------------------------------------------|-----------------------------------------------------|-------------------------------|------------------------------------------------|
| M. M. Anderson | Vice President | \$ 112,000 | \$ 30,528 |
| R. V. Davies | Vice President | 107,000 | 24,491 |
| Leon F. Hickman | Vice President and General Counsel | 125,000 | 24,948 |
| Alfred M. Hunt | Secretary | 31,000 | 13,250 |
| Roy A. Hunt | Chairman of the Executive Committee | 90,000 | 47,250 |
| Frank L. Magee | President | 161,000 | 32,320 |
| I. W. Wilson | Chairman of the Board | 190,000 | 55,377 |
| Directors and Officers as a Group | Officers | 1,768,159 | 506,023 |

(1) During 1958, the Company had agreements with eighteen officers and, as of December 31, 1958, with sixteen officers providing for the payment to them, or in case of death to designated persons, in equal monthly installments during varying periods of five, eight and ten years, after the termination of their employment by death, disability or retirement at or after age 65, of an amount equal to the aggregate additional compensation paid by the Company to them, respectively, after the dates of their agreements. The officers have agreed during such periods to perform such advisory or consulting services as the Company may request and to refrain from entering the employ of, or rendering any service to, any competitor of the Company or any of its wholly owned subsidiaries. Those employees who shall receive additional compensation and the individual amounts thereof are determined each year by the Executive Committee of the Board of Directors (no member thereof participating in a decision on his own compensation), the total amount being within the limits of the lump sum appropriation by the Board of Directors for additional compensation. Aggregate remuneration as above stated includes additional compensation accrued for services rendered in 1958 although such additional compensation was not payable until January 1959. Amounts equal to the additional compensation were accrued by the Company in 1958 for the accounts of the eighteen officers under the deferred compensation agreements as follows: Mr. Anderson—\$28,000, Mr. Davies—\$26,000, Mr. Hickman—\$29,000, Mr. Magee—\$35,000, Mr. Wilson—\$40,000, and other officers—\$221,200. The aggregate amounts accrued to date for the accounts of the eighteen officers under the deferred compensation agreements are: Mr. Anderson—\$210,500, Mr. Davies—\$196,000, Mr. Hickman—\$224,000, Mr. Magee—\$247,500, Mr. Wilson—\$315,000, and other officers—\$878,500.

(2) Except as noted below, the estimated annual retirement benefits to directors and officers are based on the assumptions that the Retirement Plan shall continue in effect unchanged until the normal retirement date of the individual, that he shall continue to work for the Company at his present rate of compensation until retirement, that he shall retire on his normal retirement date, and that he shall not have elected any optional form of annuity. The estimated annual retirement benefits of Mr. Roy A. Hunt and Mr. Wilson and two other officers represent the normal annual pensions which would have been payable to them if they had retired on December 31, 1958. The estimated annual retirement benefits of one director who retired from active service as an officer prior to 1958 and of two officers who retired from active service in 1958 represent the actual pensions payable to them.

No specific amount is paid or set aside by the Company for the account of any individual officer or employee under its Employee Retirement or Group Insurance Plans. Contributions and premiums, respectively, are paid by the Company on a group basis and not on an individual basis.

Alcoa Savings Plan Data

At the 1958 annual meeting of the shareholders, approval was giving to the Alcoa Savings Plan For Salaried Employees under which an eligible employee may save from 2 to 8% of his salary (depending on length of service). The Company makes a contribution equal to one-half of the employee's savings. The employee's savings and the Company contribution are turned over to a Trustee for investment. The employee may direct that all of his savings be invested in U. S. Savings Bonds, or one-half be invested in Savings Bonds and the other one-half in common stock of the Company. The Company contribution is invested in common stock of the Company. While the employee may withdraw either one-half or all of his own savings for any year at any time, the Company contribution for any one year for the employee will be forfeited unless he leaves his savings for that year with the Trustee until the end of the third year following that year. The Trustee may purchase the common stock either on the open market or from the Company at the current market price. The Trustee is to vote all non-forfeitable full shares of common stock of Alcoa [fol. 4534] held by it in a participant's account in accordance with the participant's directions and may in its discretion vote all other shares held by it.

The savings of each person named in the foregoing table of remuneration and of all directors and officers as a group, and the Company contributions made with respect to them during the year 1958 under the Savings Plan (including amounts saved during the preliminary program which began November 1, 1957, and ended during 1958 and the Company contributions with respect to the preliminary program of one-half the savings plus an amount calculated at the rate of 3% per year on the total of such savings and contributions) were as follows:

| Name of Individual or Identity of Group | Savings | Company Contributions |
|--------------------------------------------|----------|--------------------------|
| M. M. Anderson | \$ 7,840 | \$ 3,952 |
| R. V. Davies | 4,860 | 2,430 |
| Leon E. Hickman | 5,880 | 2,964 |
| Alfred M. Hunt | 2,240 | 1,120 |
| Roy A. Hunt | 8,400 | 4,234 |
| Frank L. Magee | 11,200 | 5,645 |
| I. W. Wilson | 14,000 | 7,056 |
| Directors and Officers as a Group | 104,021 | 52,399 |

The Company contribution for the account of all directors and officers as a group represents less than 2% of the gross Company contribution to the accounts of all employees participating in the Savings Plan.

Alcoa Employees' Stock Option Plan Data

An employees' stock option plan was adopted by the Company's shareholders in 1952. Among the purposes of the plan is the encouragement of officers and employees mainly responsible for the management, growth and protection of the business of the Company to purchase its common stock and thus to share more directly in the future success of the business. Other considerations include an incentive to the key employees to promote the well-being of the Company and to develop a better appreciation by these employees of the shareholder point of view in matters of corporate management.

Options under the plan have been granted as set forth in the table below. Data as to number of shares and price have been adjusted to reflect the 2 for 1 stock splits in April 1953 and June 1955.

| Date Options Granted | Total Number of Shares Covered | Option Price |
|-------------------------|-----------------------------------|-----------------|
| May 15, 1952 | 1,057,600 | \$ 17.68 1/4 |
| February 26, 1954 | 174,700 | 29.37 1/2 |
| July 24, 1956 | 198,100 | 117.25 |
| March 7, 1958 | 193,000 | 68.50 |

The 1958 options were issued at 100% of the market price on the date of issuance and the other options were issued at approximately, but not less than, 95% of such market price.

At the time the options were issued in 1958, the Company and optionees cancelled options for a like number of shares granted on July 24, 1956. It was felt that by virtue of the general business recession and the decline in the market

price of the Company's stock the options issued in 1956 were no longer effective in promoting the purposes of the plan.

Directors and officers whose remuneration is reported in the foregoing table of remuneration received options on March 7, 1958, as follows: Mr. Anderson—2,000 shares, Mr. Davies—1,000 shares, Mr. Hickman—2,500 shares, Mr. Alfred M. Hunt—1,000 shares, and Mr. Magee—5,000 shares. Total options granted to all directors and officers as a group on that date amounted to 27,000 shares. These directors and officers surrendered options for a like number of shares that originally had been issued on July 24, 1956. [fol. 4535] As of February 6, 1959, there have been exercised in whole or in part 1,105 options for the purchase of 1,093,410 shares, for which the Company has received \$20,716,391. Mr. Alfred M. Hunt exercised options on April 29, 1958, as follows: options issued May 15, 1952, for 600 shares; options issued February 26, 1954, for 1,200 shares. The high and low sales prices of the Company's common stock on the New York Stock Exchange on that date were \$65.50 and \$64.87½, respectively. Directors and officers as a group have exercised options for the purchase of the number of shares shown in the following tabulation which also shows the range of market prices:

| Calendar Period | May 1952 Options Number of Shares Purchased at \$17.68 1/2 Per Share | Feb. 1954 Options Number of Shares Purchased at \$29.37 1/2 Per Share | Market Price Range |
|--------------------------|-------------------------------------------------------------------------------|--------------------------------------------------------------------------------|--------------------------|
| First Quarter 1958..... | 0 | 300 | \$74 1/2-80 1/2 |
| Second Quarter 1958..... | 600 | 1,200 | \$71 1/2-82 1/2 |
| Third Quarter 1958..... | 0 | 4,000 | \$80 -89 1/2 |
| Fourth Quarter 1958..... | 0 | 0 | \$96 1/2-82 1/2 |
| Jan. 1-Feb. 6, 1959..... | 0 | 0 | \$83 1/2-80 |

In consideration for each option granted to him, the optionee under each of the foregoing series of options agreed to remain in the employment of the Company or its subsidiaries for at least two years after the date of the option or until age 65, whichever should be earlier, at the salary rate in effect on said date or such changed rate as might be fixed by the Company or its subsidiaries, except that an optionee who had attained age 65 when granted an option agreed so to remain in employment for the period of his extended service at that time. Subject to the provisions of the plan, options granted in 1952, 1954 and 1956 to persons under age 65 may be exercised during 10 years after the date thereof (but only after two years from such date in the case of 1956 options), but if on the 6th, 7th, 8th or 9th anniversary of the issuance of any option the unexercised portion thereof shall exceed 90%, 80%, 70% or 60%, respectively, of the shares originally covered thereby (as adjusted for stock dividends, stock split-ups and certain other changes in capital structure), the options shall thereupon expire as to such excess. Subject to the provisions of the plan, options granted in 1958 to persons under age 65 are exercisable after July 24, 1958, and within eight years from said date, but if on the 4th, 5th, 6th or 7th anniversary of said date the unexercised portion thereof shall exceed 90%, 80%, 70% or 60%, respectively, of the shares covered thereby (as adjusted for stock dividends, stock split-ups and certain other changes in capital structure), the options shall expire as to such excess. The option granted to one who had attained age 65 is exercisable only within one year from the date thereof. The plan provides that upon an optionee's death, the termination of his employment or his attaining age 65, his option may thereafter be exercised only within limited times and in each case prior to the expiration of the option period.

Alcon's Stock Ownership

As of February 6, 1959, there were approximately 3,900 shareholders of the Company's \$3.75 Cumulative Preferred Stock and approximately 23,800 shareholders of its Common Stock.

The only shareholder who held of record 10% or more of any class of stock of the Company on February 6, 1959 was Mac & Company, P. O. Box 926, Pittsburgh, Pennsylvania, which held 126,413 shares of \$3.75 Cumulative Preferred Stock (19.2% of the class) and 1,666,485 shares of Common Stock (8.1% of the class). The Company has been informed by Mellon National Bank and Trust Company that Mac & Company is a nominee of the Bank for the purpose of holding record title to securities and that the shares of Preferred and Common Stock of the Company of record in the name of Mac & Company on February 6, 1959, were held by the Bank in various fiduciary capacities, of which 73,653 shares of Preferred Stock and 40,000 shares of Common Stock were held by the Bank as Trustee under the Employee Retirement Plans of the Company and participating subsidiaries.

The directors and officers of the Company, as a group, owned 2,618,516 shares of Common Stock (12.7% of the class) on February 6, 1959, according to information furnished to the Company by them. Two officers owned .60 shares of Preferred Stock, and a director and officer had a remainder interest in two trusts in which 1,090 shares of Preferred Stock were held.

[fol. 4536] Dissenters' Rights of Appraisal

Under the laws of the State of New York (see Sections 20 and 21 of the New York State Stock Corporation Law) any stockholder not in favor of the Plan outlined above may at any time prior to the vote upon such Plan object to such Plan, in writing filed with the Corporation, and demand payment for his stock. Under the provisions of Sections 20 and 21 of the New York State Stock Corporation Law the Corporation, within ten days after the last day on which a demand for such payment might have been made, would be required to offer to buy the stock from the dissenting stockholder at a price deemed by the Corporation to be the value thereof. If the Corporation fails to make such offer or the stockholder does not accept the Corporation's offer within 20 days, either he or the Corporation may petition the New York State Supreme Court to determine the value of such

stock as of the day before the vote on the proposal to which the stockholder objects, and the Court will thereafter proceed with such a determination. Any stockholder demanding payment for his stock unless he has accepted an Offer of the Corporation to pay for his stock, must within 20 days after the vote upon the Plan, submit his stock certificate or certificates to the Corporation for notation thereon of the fact of such demand.

The above summary of the laws of the State of New York with respect to the rights and remedies of dissenting stockholders does not purport to be complete and is qualified in its entirety by reference to Sections 20 and 21 of the New York State Stock Corporation Law, copies of which Sections are annexed hereto as Exhibit B.

Financial Statements

This Proxy Statement includes the financial statements referred to on page 22.

Other Matters

The management does not know of any other matters which may come before the meeting. However, if any other matters properly come before the meeting, it is the intention of the appointees named in the enclosed form of Proxy to vote the Proxy in accordance with their judgment on such matters.

Solicitation of Proxies

The Corporation will pay the cost of preparing and mailing this proxy statement and the cost of soliciting proxies. In addition to the solicitation of share owners of record by mail, the Corporation will request brokerage houses and other nominees or fiduciaries to forward soliciting material to beneficial owners of stock held of record by such persons, and the Corporation will reimburse such brokerage firms and other nominees and fiduciaries for their expenses incurred in forwarding such soliciting material to the beneficial owners of shares held by them of record. It is also expected that some of the officers, directors and regular employees of Rome Cable Corporation, who will receive no compensa-

tion therefor in addition to their regular compensation, will solicit proxies on behalf of the management by telephone, telegraph and personal interview, the cost of any such solicitation to be borne by Rome Cable Corporation.

The Board of Directors of Rome Cable Corporation Strongly Recommends a Vote in Favor of the Proposed Plan.—Your Cooperation in Giving This Matter Your Immediate Attention and in Returning Your Proxies Promptly Will Be Appreciated.

By order of the Board of Directors, Gerard A. Weiss,
Secretary.

Rome, New York

March 3, 1959.

[fol. 4537]

Financial Statements

Index to Financial Statements

| | Page |
|------------------------------------------------------------------------------|------|
| Rome Cable Corporation | |
| Opinion of Independent Public Accountants..... | 23 |
| Summary of Earnings..... | 8 |
| Statements of Financial Condition..... | 24 |
| Analyses of Capital Invested..... | 26 |
| Operating Statements..... | 27 |
| Notes to Financial Statements..... | 28 |
| Aluminum Company of America and Consolidated Subsidiary Companies | |
| Opinion of Independent Certified Public Accountants | 31 |
| Summary of Consolidated Income..... | 9 |
| Consolidated Balance Sheet..... | 32 |
| Statements of Consolidated Retained Earnings and Additional Capital | 34 |
| Notes to Consolidated Financial Statements..... | 35 |

[fol. 4538] Opinion of Independent Public Accountants

Board of Directors
Rome Cable Corporation
Rome, New York

We have examined the financial statements of Rome Cable Corporation for the period of five years ended March 31, 1958. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the accompanying statement of financial condition, operating statements and analyses of capital invested present fairly the financial position of Rome Cable Corporation at March 31, 1958, and the results of its operations for the period of three years then ended, in conformity with generally accepted accounting principles applied on a consistent basis.

Further, it is our opinion that the tabulation appearing in the Proxy Statement under the caption "Summary of Earnings" presents fairly in summarized form, and in accordance with generally accepted accounting principles consistently applied, the information therein set forth for the period of five years ended March 31, 1958.

Ernst & Ernst.

New York, New York

February 9, 1959.

Rome Cable Corporation
Statements of Financial Condition

| Assets | December 31, 1958 (Unaudited) | March 31, 1958 |
|------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|---------------------|
| Current Assets: | | |
| Cash | \$ 2,471,557 | \$ 4,571,808 |
| Receivables—trade and sundry—less allowances of \$100,000 | 2,929,156 | 2,691,211 |
| Inventories—In process and finished goods, raw material, manufacturing supplies, etc.—Note A | 7,624,823 | 6,914,052 |
| Prepaid expenses and sundry supplies | 538,217 | 565,775 |
| Total Current Assets | <u>\$13,563,753</u> | <u>\$14,743,446</u> |
| Other Assets: | | |
| Sundry investments | \$ 108,000 | \$ 98,000 |
| Receivables from employees under stock purchase plan (shares of Common Stock held as collateral, December 31—16,455 shares; March 31—18,870 shares)—Note B | 158,611 | 182,632 |
| Plants and Equipment: | | |
| Land | \$ 266,611 | \$ 280,632 |
| Building | 383,073 | 305,137 |
| Machinery and equipment | 6,228,362 | 6,201,103 |
| | 10,220,617 | 9,633,023 |
| Total plants and equipment—at cost | <u>\$16,832,052</u> | <u>\$16,139,263</u> |
| Less allowances for depreciation and amortization | 7,866,591 | 7,173,697 |
| | <u>\$ 8,965,461</u> | <u>\$ 8,965,566</u> |
| | <u>\$22,795,825</u> | <u>\$23,989,644</u> |

See notes to financial statements.

Rome Cable Corporation
Statements of Financial Condition
Liabilities

Current Liabilities:

Portion of long-term debt payable within one year
Accounts payable and accrued expenses
Dividend payable January 3, 1959
Federal taxes on income—estimated

| | December 31, 1958 (Unaudited) | March 31, 1958 |
|--|-------------------------------------|---------------------|
| | \$ 278,000 | \$ 350,000 |
| | 1,482,678 | 1,786,775 |
| | 139,401 | — |
| | 287,942 | 905,144 |
| | <u>\$ 2,188,021</u> | <u>\$ 3,041,919</u> |

Total Current Liabilities

Long-Term Debt—Note C:

Promissory note 4½%, due in semi-annual installments of \$125,000 to August 1, 1961, less \$250,000 due and payable within one year and included above
Promissory notes 4½%, due in annual installments of \$300,000 from August 1, 1962, balance due August 1, 1972, less \$28,000 at December 31, 1958 and \$100,000 at March 31, 1958 payable within one year and included above

| | | |
|--|---------------------|---------------------|
| | \$ 500,000 | \$ 625,000 |
| | <u>3,872,000</u> | <u>3,900,000</u> |
| | <u>\$ 4,372,000</u> | <u>\$ 4,525,000</u> |

Reserve:

For difference between cost and prices charged to customers for returnable reels, spools and cases

| | | |
|--|------------|------------|
| | \$ 114,801 | \$ 156,115 |
|--|------------|------------|

December 31, 1958
March 31, 1958
(Unaudited)

Capital Invested:

Capital Shares:

Common Stock (\$5 per value)—Note D:

| | December 31, 1958 | March 31, 1958 |
|-------------------------------------------------------------------------------------------------------|---------------------------|---------------------------|
| Authorized | 1,200,000 | 1,200,000 |
| Outstanding | 557,602 | 567,802 |
| In treasury | 34,200 | 34,000 |
| Issued | 591,802 | 591,802 |
| Additional capital paid in for stock, plus amounts transferred from earnings retained in the business | \$ 2,959,010 3,285,612 | \$ 2,959,010 3,285,612 |
| | \$ 6,244,622 | \$ 6,244,622 |
| Earnings retained in the business—Notes C and E: | | |
| Unappropriated | 10,196,578 | 10,338,432 |
| Appropriated for contingencies | 450,000 | 450,000 |
| | \$16,891,200 | \$17,033,054 |
| Less cost of Common Stock in treasury | 770,197 | 766,444 |
| | \$16,121,003 | \$16,266,610 |
| | \$22,795,825 | \$23,989,644 |

See notes to financial statements.

Rome Cable Corporation
Analyses of Capital Invested

| | Nine months ended December 31, 1958 (Unaudited) | | Year ended March 31, 1956 1958 1957 | |
|-------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------|---------------------|-------------------------------------------|---------------------|
| Capital Shares | | | | |
| Common Stock—Note D: | | | | |
| Balance at beginning of period | \$ 2,959,010 | \$ 2,959,010 | \$ 2,822,185 | \$ 2,567,500 |
| Add par value of Common Stock issued as stock dividend during the year, 1957—27,365 shares; 1956—60,937 shares | | | 136,825 | 254,685 |
| | <u>\$ 2,959,010</u> | <u>\$ 2,959,010</u> | <u>\$ 2,959,010</u> | <u>\$ 2,822,185</u> |
| Additional capital paid in for stock, plus amounts transferred from earnings retained in the business: | | | | |
| Balance at beginning of period | 3,285,612 | 3,285,612 | 2,642,535 | 1,674,732 |
| Add excess of ascribed value over par value of shares issued as stock dividend during the year | | | 643,077 | 967,803 |
| | <u>\$ 3,285,612</u> | <u>\$ 3,285,612</u> | <u>\$ 3,285,612</u> | <u>\$ 2,642,535</u> |
| | <u>\$ 6,244,622</u> | <u>\$ 6,244,622</u> | <u>\$ 6,244,622</u> | <u>\$ 5,464,720</u> |
| Earnings retained in the business—Notes C and E: | | | | |
| Unappropriated: | | | | |
| Balance at beginning of period | 10,338,432 | 10,044,503 | 9,344,130 | 9,263,156 |
| Add net earnings for period | 276,348 | 1,019,071 | 2,255,819 | 2,023,070 |
| | <u>\$10,614,780</u> | <u>\$11,063,574</u> | <u>\$11,599,949</u> | <u>\$11,286,226</u> |

Rome Cable Corporation

Analyses of Capital Invested—Continued

Deduct dividends paid or payable:

In cash:

\$.75 per share.....
 \$1.30 per share.....
 \$1.40 per share.....
 In Common Stock (1957—5%; 1956—10%), at ascribed value as
 determined by Board of Directors
 Cash payments in lieu of issuance of fractional shares in connection
 with the foregoing stock dividend

418,202

725,142

750,695

779,902

24,849

10,537

\$ 1,942,096

\$ 9,344,130

Balance at end of period

Appropriated:

Balance at beginning and end of period

450,000

450,000

\$ 10,494,503

\$ 9,704,130

\$ 15,258,850

Deduct:

Cost of Common Stock in treasury:

34,200 shares.....
 34,000 shares.....
 36,000 shares.....

770,197

766,444

766,444

Total capital invested at end of period

\$16,121,003

\$16,266,610

\$15,972,681

\$14,401,829

857,021

See notes to financial statements.

[fol. 4542]

Rome Cable Corporation
Operating Statements

| | Year ended March 31, | | |
|--------------------------------------------------------|----------------------|---------------------|---------------------|
| | 1958 | 1957 | 1956 |
| Net sales..... | \$40,674,730 | \$52,790,065 | \$56,996,082 |
| Cost of products sold..... | \$34,805,653 | \$44,560,283 | \$49,742,051 |
| Distribution, administrative and general expenses..... | 3,510,830 | 3,413,988 | 2,930,426 |
| | <u>\$38,316,483</u> | <u>\$47,974,271</u> | <u>\$52,672,477</u> |
| Interest expense..... | \$ 2,298,247 | \$ 4,815,784 | \$ 4,324,203 |
| Other charges—credits* | \$ 211,365 | \$ 157,210 | \$ 149,434 |
| | <u>9,189*</u> | <u>52,755</u> | <u>18,280*</u> |
| | <u>\$ 202,176</u> | <u>\$ 209,965</u> | <u>\$ 131,135</u> |
| Provision for federal taxes on income..... | \$ 2,096,071 | \$ 4,605,819 | \$ 4,193,070 |
| | <u>1,077,000</u> | <u>2,350,000</u> | <u>2,170,000</u> |
| Net Earnings..... | <u>\$ 1,019,071</u> | <u>\$ 2,255,819</u> | <u>\$ 2,023,070</u> |

See notes to financial statements.

[fol. 4543]

Rome Cable Corporation

Notes to Financial Statements

Note A—Inventories:

Inventories are stated generally at cost, and include amounts of \$6,959,130 and \$6,221,765 at December 31, and March 31, 1958 respectively, which were computed by the last-in-first-out method. Total inventory valuation is well below aggregate market prices.

| | December 31, 1958 | March 31, 1958 |
|------------------------------------------------------|----------------------|--------------------|
| Inventories consisted of: | | |
| In process and finished goods..... | \$5,852,100 | \$5,397,623 |
| Raw materials..... | 1,354,800 | 1,180,147 |
| Spools, reels, cases, manufacturing supplies..... | 417,923 | 336,882 |
| | <u>\$7,624,823</u> | <u>\$6,914,652</u> |

Amounts of inventories used in computation of cost of products sold, priced on the aforesaid basis, were as follows:

| | |
|------------------------|-------------|
| April 1, 1955..... | \$6,024,630 |
| March 31, 1956..... | 6,979,752 |
| March 31, 1957..... | 7,245,818 |
| March 31, 1958..... | 6,914,652 |
| December 31, 1958..... | 7,624,823 |

Note B—Receivables From Employees:

Receivables from employees under stock purchase plan include \$46,284 at December 31, 1958 and \$52,702 at March 31, 1958 due from officers.

Note C—Long-term Debt:

The promissory notes (4 $\frac{3}{4}$ %) provide for additional payments, due each August 1st, limited to \$100,000 for each year, contingent on earnings of the preceding fiscal year, to be applied to the latest maturities of the notes.

So long as the notes are outstanding, the Company is required, among other things, to maintain net working capital (excess of current assets over current liabilities) at stipulated amounts. At December 31 and March 31, 1958, net

working capital exceeded such requirements by more than \$4,400,000.

The terms of issuance of the notes place certain restrictions upon the payment of dividends (except stock dividends) and the redemption, retirement, or purchase by the Company of its capital shares. The portion of earnings retained in the business not affected by these restrictions was approximately \$2,052,000 at December 31, 1958, and \$2,293,000 at March 31, 1958.

Note D—Stock Option Plan:

Reference is made to the caption "Stock Option Plan" in this Proxy Statement concerning stock options.

Note E—Renegotiation:

Renegotiation proceedings for years up to the fiscal year ended March 31, 1956 have been concluded. Settlement for year ended March 31, 1954 resulted in a decrease of \$87,390 in net earnings for that year and retro-active adjustment therefor has been made in the financial statements. It is believed that any renegotiation refunds which might be required for subsequent years would not materially affect the financial position of the Company at December 31, 1958, or earnings for the two years and nine months then ended.

Note F—Pension Plans:

There is in effect a non-contributory pension plan covering all employees and also a group retirement insurance plan covering all salaried employees, which is partly contributory by the beneficiaries. The unfunded past service cost of the pension plan was approximately \$2,215,000 and \$2,160,000 at December 31, 1958 and March 31, 1958, respectively. The Company reduced its contribution for past service cost for the year ended March 31, 1958, and made no provision for past service cost for the nine months ended December 31, 1958. Amounts provided under the plans were as follows:

| Period | Amount Provided |
|-------------------------------------|--------------------|
| Year ended March 31, 1956 | \$580,882 |
| Year ended March 31, 1957 | 594,293 |
| Year ended March 31, 1958 | 493,384 |
| Nine months ended December 31, 1958 | 278,000 |

[fol. 4544] Note G—Depreciation and Amortization Policies, etc.:

Depreciation is computed on the sum of the years digits method for certain assets acquired new; subsequent to December 31, 1953. All other assets are depreciated by the straight line method.

Other than costs referred to hereinafter, which had been certified for amortization over five year periods, depreciation has been computed on the basis of the estimated useful life of such assets as follows:

| | |
|--------------------------------|---------------|
| Buildings | 5 to 40 years |
| Machinery and equipment | 3 to 18 years |
| Transportation equipment | 5 to 10 years |
| Office furniture and equipment | 2 to 18 years |
| Fences | 15 years |

Cost of facilities aggregating \$805,837 which had been certified for amortization over periods of five years had been fully amortized at March 31, 1958.

Expenditures for maintenance and repairs were charged to current operating expenses. Cost of renewals and betterments were charged to the pertinent property accounts. At the time properties were replaced, retired or otherwise disposed of, the cost of such properties and the amount of depreciation accumulated thereagainst were deducted respectively from the pertinent asset and related depreciation allowance accounts. Profit or loss resulting from such transaction was included in the income account for the year.

Note H—Supplementary Profit and Loss Information:

| | Nine months ended December 31, 1958 | 1958 | Year ended March 31, 1957 | 1956 |
|----------------------------------------------------------------------------|----------------------------------------------|------------------|------------------------------|------------------|
| Charged directly to profit and loss | | | | |
| Maintenance and repairs | | | | |
| Charged to costs | \$458,392 | \$753,126 | \$830,751 | \$789,708 |
| Charged to other expenses | 2,842 | 5,092 | 2,742 | 3,028 |
| | <u>\$461,234</u> | <u>\$758,218</u> | <u>\$833,493</u> | <u>\$792,736</u> |
| Provision for depreciation and amortization of plants and equipment | | | | |
| Charged to costs | \$680,953 | \$835,691 | \$810,163 | \$830,030 |
| Charged to other expenses | 18,032 | 22,502 | 16,151 | 13,526 |
| | <u>\$698,985</u> | <u>\$858,193</u> | <u>\$826,314</u> | <u>\$843,556</u> |
| Taxes, other than taxes on income | | | | |
| Charged to costs | | | | |
| On pay rolls | \$120,134 | \$173,550 | \$181,037 | \$164,695 |
| Realty and personal property | 189,425 | 239,790 | 223,273 | 195,871 |
| Charged to other expenses | | | | |
| On pay rolls | 19,037 | 30,623 | 28,149 | 50,933 |
| Realty and personal property | 33,199 | 31,513 | 24,353 | 28,172 |
| Franchise, etc. | 20,000 | 120,092 | 234,967 | 213,384 |
| | <u>\$381,795</u> | <u>\$505,568</u> | <u>\$639,779</u> | <u>\$653,045</u> |
| Total taxes | | | | |
| Rents and royalties | | | | |
| Charged to costs | \$ 47,011 | \$ 60,242 | \$ 74,015 | \$ 51,326 |
| Charged to other expenses | 46,295 | 76,258 | 70,101 | 81,329 |
| | <u>\$ 93,306</u> | <u>\$136,500</u> | <u>\$144,116</u> | <u>\$132,655</u> |

There were no management or service contract fees.

[fol. 4545] Note I—Proposed Sale of Assets:

Reference is made to the caption "The Proposed Plan and Agreement" in this Proxy Statement for the terms of the proposed Plan and Agreement dated February 17, 1959, between Aluminum Company of America and Rome Cable Corporation.

Note J—Operations for the Nine Months Ended December 31, 1958:

The Company is of the opinion that all adjustments necessary for a fair statement of operating results for this nine months have been included and consisted solely of normal recurring accruals. Interim figures for the nine months are not necessarily indicative of the results for the entire year.

[fol. 4546] Opinion of Independent Certified Public Accountants

To the Shareholders and Board of Directors of Aluminum Company of America:

We have examined the consolidated balance sheet of Aluminum Company of America and consolidated subsidiary companies as of December 31, 1958, and the related summary of consolidated income for the years 1954 through 1958, and statements of consolidated retained earnings and additional capital for the years 1956 through 1958. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the aforementioned financial statements present fairly the consolidated financial position of Aluminum Company of America and consolidated subsidiary companies at December 31, 1958, and the results of their operations for the years 1954 through 1958, in conformity with generally accepted accounting principles, and such principles were applied on a consistent basis except for the change in 1956 with respect to the method of valuing inventories and

the change in 1954 with respect to the method of computing depreciation referred to in Note B of Notes to Summary of Consolidated Income, in which we concur.

Lybrand, Ross Bros. & Montgomery.

Pittsburgh, Pa.

February 3, 1959.

[fol. 4547]

Aluminum Company of America and Consolidated Subsidiary Companies
Consolidated Balance Sheet, December 31, 1958

| Assets | |
|--------------------------------------------|-------------------|
| Current assets: | |
| Cash | \$ 52,039,341 |
| United States Treasury Bills, at cost | 25,025,389 |
| Receivables: | |
| Customers, including notes of \$2,340,001 | \$ 90,528,405 |
| Other | 4,031,552 |
| | <hr/> 94,559,957 |
| Less, allowances for returns, losses, etc. | 92,189,957 |
| Inventories (Note 1) | 209,865,782 |
| Prepaid insurance and taxes | 5,290,195 |
| | <hr/> 385,310,664 |
| Total current assets | 1,119,080 |
| Indemnity and surety deposits | 19,024,741 |
| Receivables and advances—noncurrent | |
| Investments, at cost: | |
| Subsidiaries not consolidated | |
| Other | 3,092,844 |
| | <hr/> 25,933,183 |
| | <hr/> 29,026,927 |

Properties, plants and facilities, at cost:

Land and land rights, including mines
Structures
Machinery, equipment and other facilities

57,522,324
525,236,712
904,918,515

Less, accumulated allowances for amortization, depletion and depreciation

1,487,677,551
669,819,950

Construction work in progress

800,889,283

Patents and other intangible assets, at cost, less amortization of \$492,265

1,489,680

Deferred charges:

Deferred exploration and mining expenses

3,035,348

Unamortized debt discount and expense (Note 2)

3,894,999

Other

3,468,718

10,399,065

\$1,337,258,520

The appended notes are an integral part of the financial statements.

Aluminum Company of America and Consolidated Subsidiary Companies

Consolidated Balance Sheet, December 31, 1958

1414

Liabilities

Current liabilities:

| | |
|--------------------------------------------------------------------|---------------|
| Accounts payable | \$ 29,606,824 |
| Dividends on preferred and common stock | 7,430,827 |
| Accrued salaries, wages, vacation allowance and other compensation | 19,085,140 |
| Provision for taxes, including taxes on income | 24,921,008 |
| Other current liabilities | 5,444,838 |
| Long-term debt due within one year | 5,786,189 |

Total current liabilities

| | |
|----------------------------------------------------------|-------------|
| Long-term debt, less amount due within one year (Note 3) | 92,275,426 |
| | 462,697,480 |

Reserves, deferred credits and noncurrent liabilities:

| | |
|---------------------------------------------------------|---------------|
| Reserve for future United States income taxes | \$ 83,748,249 |
| Reserve for mold, die and reel repairs and replacements | 3,733,711 |
| Open voyage revenue, net and other deferred credits | 3,519,201 |
| Noncurrent liabilities | 4,143,588 |

Commitments and contingent liabilities (Note 4)

Shareholders' Equity

Capital Stock:

Serial Preferred Stock, par value \$100 per share:

Authorized 1,000,000 shares:

\$3.75 Cumulative Preferred Stock, redeemable at \$100 per share:

Authorized 660,000 shares; issued 659,909 shares

65,990,900

Common Stock, par value \$1.00 per share (Notes 5 and 6):

Authorized 50,000,000 shares; issued 20,644,966 shares

20,644,966

Additional capital

Retained earnings

35,392,800

565,112,199

687,140,865

\$1,337,258,520

The appended notes are an integral part of the financial statements.

Aluminum Company of America and Consolidated Subsidiary Companies

Statements of Consolidated Retained Earnings and Additional Capital For the years 1956 through 1958

| | Years | | |
|----------------------------------------------------------------|----------------------|----------------------|----------------------|
| | 1958 | 1957 | 1956 |
| Retained Earnings | | | |
| Balance, beginning of year | \$549,468,997 | \$501,103,551 | \$438,599,852 |
| Net income (Note B of Notes to Summary of Consolidated Income) | 42,885,230 | 75,568,461 | 89,621,033 |
| | <u>592,354,227</u> | <u>576,672,012</u> | <u>528,220,885</u> |
| Dividends: | | | |
| On Preferred Stock—\$3.75 per share | 2,474,089 | 2,474,089 | 2,474,089 |
| On Common Stock—\$1.20 per share | 24,767,339 | 24,728,326 | 24,642,644 |
| | <u>27,242,028</u> | <u>27,203,015</u> | <u>27,117,334</u> |
| Balance, end of year | <u>\$565,112,199</u> | <u>\$549,468,997</u> | <u>\$501,103,551</u> |

| | Years | | |
|-------------------------------------------------------------------------------------------------------------------|----------------------|----------------------|----------------------|
| | 1958 | 1957 | 1956 |
| Additional Capital | | | |
| Balance, beginning of year | \$ 34,463,868 | \$ 33,423,544 | \$ 30,162,778 |
| Excess of amounts received over the aggregate par value of Common Stock issued under Employees' Stock Option Plan | 928,932 | 1,040,324 | 3,260,766 |
| Balance, end of year | <u>\$ 35,392,800</u> | <u>\$ 34,463,868</u> | <u>\$ 33,423,544</u> |

The appended notes are an integral part of the financial statements.

[fol. 4550] Aluminum Company of America
and Consolidated Subsidiary Companies

Notes to Consolidated Financial Statements

Note Relating to Principles of Consolidation and Equity in Consolidated Subsidiaries:

The consolidated financial statements include all companies which are wholly owned. At December 31, 1958, the excess of the Company's equity in net assets of consolidated subsidiaries, as shown by their accounts, over its investment therein was \$68,771,058. In consolidation, undistributed earnings of consolidated subsidiaries since acquisition, amounting to \$68,878,351, have been included in consolidated retained earnings and \$107,293, representing the excess of cost of investment in one subsidiary over its net assets at date of acquisition, has been included with the book value of land owned by the subsidiary. All intercompany and interdepartmental transactions and profits, material in amount, have been eliminated.

The consolidated balance sheet includes net assets of consolidated subsidiaries in Canada, Venezuela and Surinam, amounting (in United States currency) to \$19,104,167. In consolidation, property assets and allowances for depreciation and depletion have been translated into United States currency at the approximate exchange rates in effect at the time such assets were acquired, and other assets and liabilities have been translated at the official or current rates of exchange, except that Canadian dollars have been translated at par.

Note 1. Inventories and Cost of Goods Sold:

Inventories are carried at the lower of cost or market. At December 31, 1956, 1957 and 1958, such costs were determined for substantially all inventories under the last-in first-out method. Prior thereto, the average cost method was used.

At December 31, 1958, inventories are classified, as follows:

| | |
|-------------------------------|----------------------|
| Finished goods | \$ 52,714,027 |
| Work in process | 112,945,245 |
| Bauxite and alumina | 17,840,222 |
| Purchased raw materials | 15,107,509 |
| Operating supplies | 11,258,779 |
| | <u>\$209,865,782</u> |

The amounts of inventories used in the computation of cost of goods sold, priced as explained above, were as follows: December 31: 1958—\$209,865,782; 1957—\$231,726,354; 1956—\$224,853,985; 1955—\$162,259,709; 1954—\$162,967,621; and 1953—\$167,137,685.

Note 2. Unamortized Debt Discount and Expense:

Deferred debt discount and expense is being amortized over periods from dates of issue of long-term debt to dates of required prepayment or dates of maturity.

Note 3. Debt:

At December 31, 1958, long-term debt comprised:

Sinking Fund Debentures:

| | |
|---------------------------------|---------------|
| 3½%, due February 1, 1964 | \$ 52,500,000 |
| 3%, due June 1, 1979 | 83,400,000 |
| 4¼%, due January 1, 1982 | 125,000,000 |
| 3¾%, due April 1, 1983 | 125,000,000 |

Notes payable:

| | |
|----------------------------------|------------|
| 2.55%, due January 1, 1967 | 20,000,000 |
| 3%, due December 1, 1973 | 60,000,000 |
| Other | 2,583,669 |

| | |
|------------------------------------------------------------------------|-------------|
| Total long-term debt | 468,483,669 |
| Less, amount due within one year included in current liabilities | 5,786,189 |

\$462,697,480

[fol. 4551] The indenture under which the 3½% Sinking Fund Debentures, due February 1, 1964, were issued provides for sinking fund payments sufficient to retire \$10,000,000 in each of the years 1959 through 1963. Retirements were made in 1958 on these debentures covering the 1959 requirement of \$10,000,000. The indenture under which the 3% Sinking Fund Debentures, due June 1, 1979, were issued provides for sinking fund payments sufficient to retire \$4.

150,000 of debentures in each of the years 1959 through 1978. Retirements were made in 1958 and 1957 on these debentures covering the 1959 requirement of \$4,150,000. The indenture under which the 4¼% Sinking Fund Debentures, due January 1, 1982, were issued provides for sinking fund payments sufficient to retire \$5,200,000 of debentures in each of the years 1959 through 1981. The indenture under which the 3¾% Sinking Fund Debentures, due April 1, 1983, were issued provides for sinking fund payments sufficient to retire \$5,200,000 of debentures in each of the years 1960 through 1982. The 2.55% notes, due January 1, 1967, provide for prepayments in annual installments of \$2,500,000. The 3% notes, due December 1, 1973, provide for prepayments in annual installments of \$12,000,000 beginning in 1969.

The aggregate amounts of long-term debt (excluding minor amounts) which will become due during the five years ending December 31, 1963 are: 1959—\$5,200,000; and 1960, 1961, 1962 and 1963—\$27,050,000 each.

Note 4. Commitments and Contingent Liabilities:

Capital expenditures, including renewals and betterments, under the \$600,000,000 five year expansion program announced in 1956, aggregated approximately \$428,000,000 through 1958. Although all the projects which are included in the expansion program have not yet been authorized, there were, at the end of 1958, unexpended balances of approximately \$39,600,000 on authorized but uncompleted projects. It is expected that approximately \$65,000,000 will be expended for capital additions and betterments during 1959, which includes preliminary construction expenditures in connection with the \$150,000,000 Brokopondo Development in Suriname, S. A. announced in 1957.

Under an agreement made in 1953, and subsequently amended, the Company has contracted to purchase primary aluminum from a Canadian corporation during the years 1959 through 1962 at the current market price in the United States at the time of shipment. Based upon the quoted market price at December 31, 1958, the amount of this commitment was approximately \$84,000,000. The Company has the option to postpone delivery of approximately \$21,000,000 of

the above shipments for periods up to a maximum of five years by purchasing aluminum certificates which require the payment of one half of the then current market price of the primary aluminum involved. Also, the Company and the Canadian corporation both have the right to cancel approximately \$13,000,000 of the shipments.

Under an agreement made in 1955 with a Norwegian corporation, the Company has contracted to advance, over a period of years, approximately \$20,000,000 and deliver about 760,000 metric tons of alumina to that corporation, with repayment to be made in primary aluminum. At December 31, 1958, approximately \$13,000,000 had been advanced and 50,000 metric tons of alumina delivered under the agreement. The repayment made in primary aluminum on account of the alumina delivered amounted to the equivalent of approximately 40,000 metric tons of alumina at December 31, 1958.

Contingent liabilities of an indeterminate amount exist in suits and claims arising in the ordinary course of business, the disposition of which is not anticipated to materially affect the financial positions as shown by the accompanying consolidated balance sheet.

Note 5. Employees' Stock Option Plan (Amounts and shares shown hereunder are after giving effect to the 2 for 1 stock splits in 1953 and 1955):

At the annual meeting in 1952, the shareholders approved an Employees' Stock Option Plan and authorized the Company to reserve 1,956,292 shares of its authorized but unissued Common Stock for the granting of options to employees. The Plan, which is administered by a committee appointed by the Board of Directors, provides, among other things, that (a) the committee shall select the officers and employees of the Company and its subsidiaries to whom options shall be granted, (b) the number of shares optioned to one individual may not exceed 5 per cent of the total shares authorized to be reserved under the Plan, (c) the option price of each share of stock covered by an option shall be not less than 95 per cent of the fair market value of the stock at the time the option is granted, and (d) the options are non-transferable during the life of the optionee and the

period of time during which each option may be exercised may not exceed ten years from the date of the option.

On May 15, 1952, February 26, 1954, and July 24, 1956, options were granted under the Plan entitling the holders thereof to acquire Common Stock at a price equal to at least 95 per cent of the fair market value on the dates the options were granted. On March 7, 1958, the Company accepted the cancellation of the outstanding options issued on July 24, 1956 for an aggregate of 193,000 shares and issued, on a share for share basis for such surrendered options, new options to purchase 193,000 shares of the Common Stock of the Company at a price equal to one hundred per cent of the fair market value on the date the option was granted. All of the 1956 options, except one covering 150 shares, were either surrendered to the Company upon issuance of the [fol. 4552] 1958 series or were cancelled or expired without being exercised. The options granted in 1952 and 1954 are exercisable throughout the option period while the options granted in 1958 and the remaining 1956 options, may not be exercised until two years after the granting date. Optionees must exercise their options at stated intervals in accordance with the provisions of the Plan or part of the options will expire. Such options covered a total of 1,057,600 shares at a price of \$17.6875 per share, 174,700 shares at a price of \$29.375 per share, 198,100 shares at a price of \$117.25 per share and 193,000 shares at a price of \$68.50 per share, respectively. At December 31, 1958; options for 1,082,434 shares had been exercised and options for 204,616 shares had been cancelled, expired or surrendered, leaving unexercised options for 336,350 shares. In addition, 537,508 shares were reserved for issuance under the Plan for which options had not been granted, making a total of 873,858 shares of Common Stock reserved at December 31, 1958.

The option price and fair market value (based upon the higher of (a) the average of the high and low market quotations for that day, or (b) the closing quotation) of the shares subject to unexercised options, at the dates the options were granted, were as follows:

| | Per Share | Total |
|---------------------------------------|------------|--------------|
| Granted May 15, 1952 (67,375 shares): | | |
| Option price | \$ 17.6875 | \$ 1,191,695 |
| Fair market value | 18.59375 | 1,252,754 |

| | | |
|------------------------------------------------------------------------|--------|------------|
| Granted February 26, 1954 (79,319 shares): | | |
| Option price..... | 29.375 | 2,329,906 |
| Fair market value..... | 30.875 | 2,448,974 |
| Granted July 24, 1956, less surrendered on March 7, 1958 (150 shares): | | |
| Option price..... | 117.25 | 17,588 |
| Fair market value..... | 123.25 | 18,488 |
| Granted March 7, 1958 (189,506 shares): | | |
| Option price..... | 68.50 | 12,981,161 |
| Fair market value..... | 68.50 | 12,981,161 |

Options exercised from the inception of the Plan to December 31, 1958, were as follows: 26,236 shares in 1952, 95,310 shares in 1953, 425,576 shares in 1954, 272,141 shares in 1955, 171,411 shares in 1956, 54,222 shares in 1957, and 37,538 shares in 1958. Proceeds from the sale of this stock amounted to \$464,049, \$1,685,795, \$7,627,000, \$5,122,360, \$3,434,164, \$1,094,546 and \$966,470, respectively. The fair market value (based upon the average of the high and low market quotations for each month in which options were exercised, multiplied by the number of option shares issued in the respective months of the periods) of these shares at the dates the options were exercised was approximately \$557,000 in 1952, \$2,475,000 in 1953, \$15,909,000 in 1954, \$16,622,000 in 1955, \$17,903,000 in 1956, \$4,795,000 in 1957, and \$2,787,000 in 1958.

Under the Company's practice with respect to accounting for options, no charges are reflected in income.

Note 6. Alcoa Savings Plan for Salaried Employees:

The Alcoa Savings Plan for Salaried Employees, begun on a preliminary basis on November 1, 1957, was approved by the shareholders at their annual meeting in 1958. The Plan provides that all full time salaried employees paid from United States payrolls, with one or more years of continuous service, are eligible to become participants, provided they are not covered by a collective bargaining agreement (unless such agreement provides for participation) and provided they are not eligible to receive supplemental unemployment benefits or similar benefits from the Company. Under the trusteed plan, such employees may save, depending upon length of service, from .2 to 8 per cent of their

annual salaries, and the Company contributes one-half of the employees' savings. Each employee may choose whether all of his savings will be invested in U. S. Savings Bonds, or one-half invested in such bonds and the other half in Common Stock of the Company. The Company contribution will be invested in the Company's Common Stock by the trustee who will purchase, from time to time, all shares at the current price in the open market. While the employee may withdraw his own savings at any time, the Company's contribution with respect to the employee's savings during a calendar year will vest only if the employee leaves such savings in the Plan for three years after the end of that calendar year. The contribution by the Company to the Plan for 1958 amounted to approximately \$2,400,000.

Note 7. Properties, Plants and Facilities:

Properties, plants and facilities include approximately \$200,000,000 for acquisitions during World War II which have been fully amortized. Substantially all of such assets are presently in use.

[fol. 4553] The cost of all other properties, plants and facilities is depreciated in the accounts on either the straight-line or sum-of-the-years-digits methods over their estimated economic useful lives. The lives assigned to the major classifications of depreciable assets are:

| | Years |
|---------------------------------------------------------------------------------------------|-----------------------------------|
| Buildings and other structures, bridges, etc. | 25 to 50 |
| Building service systems, electric, steam, water and sewer lines, etc., and yard facilities | 17 to 50 |
| Heavy rolling mills, forge and extrusion presses, shears and hammers | 25 |
| Other forming machinery and equipment and machine tools | 10 to 17 |
| Smelting pots and furnaces | 5 to 25 |
| Steam plant and electric power plant equipment and machinery (except hydroelectric) | 17 to 25 |
| Hydroelectric dams, reservoirs, spillways, etc. | 100 |
| Hydroelectric turbines and generators, etc. | 25 |
| High tension transmission lines and appurtenances | 20 to 33 |
| Railroad tracks and equipment: | |
| Within own plants | 17 to 33 |
| Outside | According to I. C. C. regulations |
| Steamships | 17 to 25 |
| Office furniture and equipment | 5 to 20 |

For tax purposes, that portion of the cost of facilities constructed under certain expansion programs which is covered by certificates of necessity is being amortized over a period of sixty months. An appropriate reserve has been provided for future income taxes, thereby recognizing the taxes which will be payable as recorded depreciation exceeds the amount deductible for tax purposes. Income taxes are allocated to income of applicable years whenever there is a material difference between the accounting for book and tax purposes of other items.

The policy with respect to depletion of minerals and gas and oil during 1958 is to record depletion at cost over the period during which the quantities of the resources are extracted. The policy with respect to amortization of patents and other intangibles is to provide ratably from income each year an amount sufficient to equal the costs thereof upon expiration of their respective lives.

Maintenance and repairs are charged to income as incurred. The policy with respect to repair and replacement of certain molds and dies during 1958 is to charge such expenditures to costs as incurred. Major renewals and betterments are capitalized. Spare parts for machinery and equipment are capitalized at the date of purchase and depreciated. When installed, the depreciated cost of spare parts is charged to maintenance and repair expense. When fixed assets are retired or otherwise disposed of, the appropriate reserve is charged with the accumulated amount of amortization, depletion or depreciation applicable to such fixed assets. Profits or losses resulting from such dispositions are included in income, except that certain subsidiaries which are under the jurisdiction of the Federal Power Commission record such items in the reserve for depreciation.

Note 8. Retirement Plans:

The various retirement plans for hourly rated and salaried employees provide that the cost of the plans will be borne entirely by the Company and participating subsidiary companies through annual contributions to trust funds. These contributions consist of actuarially determined contributions for current service and (until the estimated cost of benefits for past service shall have been fully funded) of

contributions for past service in such amounts as the Boards of Directors deem advisable. In general, the plans provide for monthly pensions upon retirement at or after age 65 or upon earlier disability, incapacity or special circumstances. The amount of pension depends upon length of service, remuneration and the amount of certain Social Security and other benefits.

The amount included in costs and expenses under the retirement plans for 1958 was \$9,200,441, of which \$1,175,582 represented payment for employees' past service. At December 31, 1958, the unpaid amount of past service costs, based on an actuarial estimate, was approximately \$9,500,000.

[fol. 4554] Note 9. Certain supplementary profit and loss information is set forth below:

| | Charged Directly to Profit and Loss | | Charged to Other Accounts | | Total |
|------------------------------------------------------------|------------------------------------------------------|------------|------------------------------|--|--------------|
| | To Cost of Goods Sold or Operating Expenses | Other | | | |
| Maintenance and repairs: | | | | | |
| 1958 | \$47,305,030 | \$ 479,898 | \$ — | | \$47,784,928 |
| 1957 | 60,594,028 | 531,016 | — | | 61,125,044 |
| 1956 | 61,896,679 | 504,196 | — | | 62,400,875 |
| Depreciation and depletion of fixed and intangible assets: | | | | | |
| 1958 | 64,165,256 | 1,494,347 | { 395,227 (A), 7,482 (B) | | 66,062,312 |
| 1957 | 56,107,178 | 1,551,328 | { 271,728 (A), 11,119 (B) | | 57,941,353 |
| 1956 | 49,378,904 | 1,391,930 | 193,956 (A) | | 50,964,790 |
| Taxes, other than income taxes (C): | | | | | |
| 1958 | 14,512,001 | 2,571,589 | 5,307 (D) | | 17,088,907 |
| 1957 | 14,813,934 | 3,121,617 | 50,489 (D) | | 17,986,040 |
| 1956 | 14,023,365 | 2,630,307 | 68,071 (D) | | 16,721,743 |
| Management and service contract fees: | | | | | |
| For entire period | | | | | — |
| Rents (E): | | | | | |
| 1958 | 2,169,252 | 1,742,360 | — | | 3,911,612 |
| 1957 | 1,694,288 | 1,589,966 | — | | 3,284,254 |
| 1956 | 1,230,258 | 1,528,890 | — | | 2,759,148 |

Note 9—Continued

| Royalties: | | | |
|------------|-----------|---------|-----------|
| 1958..... | 1,812,490 | 84,768 | 1,897,257 |
| 1957..... | 2,040,916 | 78,277 | 2,119,193 |
| 1956..... | 2,116,976 | 120,508 | 2,237,484 |

Notes:

(A) Depreciation on construction equipment, charged to construction work in progress.
 (B) Depletion on timber sold, charged to accounts receivable.

(C) Comprises:

| | 1958 | Year 1967 | 1956 |
|----------------------------------------------|---------------------|---------------------|---------------------|
| Social security taxes..... | \$ 6,180,262 | \$ 7,160,262 | \$ 7,202,982 |
| Real estate and personal property taxes..... | 8,454,066 | 8,416,073 | 7,364,084 |
| Franchise and license taxes..... | 1,251,256 | 1,682,934 | 1,407,491 |
| Other taxes..... | 1,202,713 | 726,771 | 747,186 |
| | <u>\$17,088,887</u> | <u>\$17,986,040</u> | <u>\$16,721,743</u> |

(D) Sales taxes and social security taxes, charged to construction work in progress.
 (E) Excludes hire of vessels and railroad cars by consolidated subsidiary companies.